

Report on the

**Alabama**

**Real Estate Commission**

Montgomery, Alabama



**Department of**

**Examiners of Public Accounts**

50 North Ripley Street, Room 3201  
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*Ronald L. Jones, Chief Examiner*



**STATE OF ALABAMA**

Department of

**EXAMINERS OF PUBLIC ACCOUNTS**

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October 15, 2003

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Montgomery, AL 36104-3833

Senator Larry Dixon  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Real Estate Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Real Estate Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner



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## **PROFILE**

### **Purpose/Authority**

The Alabama Real Estate Commission was created to regulate the business of brokers and real estate salespersons, to protect the public against fraud and imposition and to require a license as evidence of qualification and fitness. Statutory authority for commission operations is found in the *Code of Alabama 1975*, Sections 34-27-1 through 34-27-101.

### **Commission Characteristics**

<b>Members</b>	9
<b>Term</b>	5 years Limited to two (2) consecutive terms
<b>Selection</b>	The Governor appoints members from a list of three nominees nominated by the Alabama Professional Real Estate Society or trade association. Failure of the Senate to confirm a nominee results in a vacancy on the commission.
<b>Qualifications</b>	Resident and citizen of Alabama for at least 10 years, real estate salesperson or broker for at least 10 years (except consumer member) and never convicted a violation of State of Alabama or federal real estate license law.
<b>Racial Representation</b>	Statute requires one black member to be appointed from any congressional district of the state. One black member serves on the commission.
<b>Consumer Representation</b>	Statutes require one consumer member from a different Congressional district, on a rotating basis.
<b>Geographical Representation</b>	Statutorily, by Congressional District. Minority member at-large on a rotating basis by Congressional District.
<b>Compensation</b>	\$300.00 per month plus travel and per diem at state employee rate.
<b>Legal Representation</b>	Assistant Attorney General on staff at the commission's offices

## **Operations**

<b>Administrator</b>	Executive Director, D. Philip Lasater Annual Salary \$93,850			
<b>Location</b>	1201 Carmichael Way, Montgomery, AL 36106			
<b>Examinations</b>	Real Estate - National examination plus separate state portion (Alabama Laws, Rules and Regulations). Time-shares - State examination - Locally devised. Real Estate - Monthly (except for November) Time-shares - Monthly/as requested			
<b>Examination Location</b>	Real Estate - Mobile, Montgomery, Birmingham and Huntsville. Time-shares - Montgomery			
<b>Reciprocity</b>	Salespersons licensed in another state may apply for a reciprocal salesperson license.			
<b>Licensees (Active)</b>				
<u>Real Estate</u>	<b>FY01/02</b>	<b>FY00/01</b>	<b>FY99/00</b>	<b>FY98/99</b>
Brokers	431	7,059	417	7,220
Salespersons	1,532	13,424	1,344	14,151
Temporary	1,013	1,180	882	1,193
Companies	190	1,798	183	1,756
<u>Time-shares</u>	<b>FY01/02</b>	<b>FY00/01</b>	<b>FY99/00</b>	<b>FY98/99</b>
Original & Renewals	59	43	28	25
<b>Transfer Licenses</b>	<b>FY01/02</b>	<b>FY00/01</b>	<b>FY99/00</b>	<b>FY98/99</b>
Salesperson/broker	3,460	3,513	4,217	4,912
<b>Continuing Education</b>	Yes			
<b>Employees</b>	24 Full-time/Permanent employees			



**Financial**

**Funds Source**

Fees and fines.

**State Treasury**

Yes

**Unused Funds**

Commission retains unused balances

## **SIGNIFICANT ITEMS**

**An Alabama Real Estate Commission member is serving in conflict with state law.**

*Code of Alabama 1975*, Section 34-27-7 (e) (6) states “The governor shall appoint one new member to the commission, subject to the approval of the Senate, who shall be a consumer member... The consumer member shall meet the following requirements...that he or she has not been a licensed real estate broker or sales person for the 10 years preceding appointment.

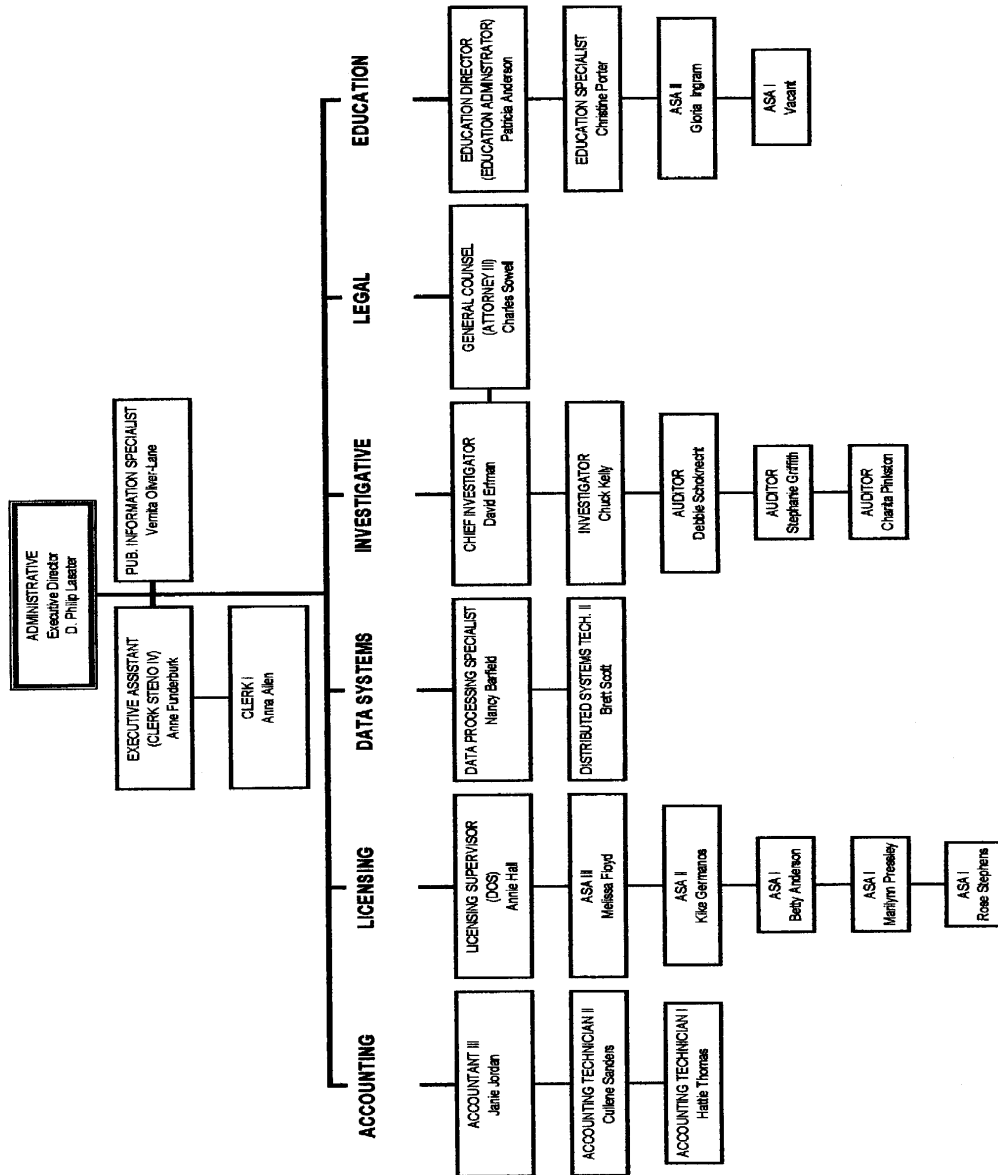
The Alabama Real Estate Commission records indicate the commission member appointed as the consumer representative in March 2002 held a real estate license in 1997. Consequently, the commissioner is not eligible for appointment as the consumer representative.

## **STATUS OF PRIOR FINDINGS**

All prior findings have been resolved

# ORGANIZATION CHART

Alabama Real Estate Commission Organizational Chart



## **PERSONNEL**

The commission appoints the executive director and sets his salary. The executive director is currently paid \$93,849.86 annually. All commission personnel are employed in the classified service of the state's merit system, except the executive director who is appointed by the board and is exempt from the requirements of the merit system statutes.

Accountant (3)	1	Black	Female
Accountant	1	White	Female
Accountant	1	Black	Male
Accounting Technician	1	White	Female
Administrative Services Officer II	1	White	Female
Administrative Support Assistant I	1	Black	Female
Administrative Support Assistant II (3)	1	Black	Female
Administrative Support Assistant II	1	Black	Female
Administrative Support Assistant II	1	White	Female
Administrative Support Assistant III (2)	1	White	Female
Administrative Support Assistant III	1	White	Female
Attorney III	1	White	Male
Clerk	1	Black	Female
Departmental Operations Specialist	1	Black	Female
Education Administrator	1	White	Female
Education Specialist (2)	1	Black	Female
Education Specialist	1	White	Male
Executive Director	1	White	Male
IT Systems Specialist	1	White	Female
IT Systems Specialist, Associate	1	White	Male
Programmer	1	Black	Male
Public Information Specialist I	1	Black	Female
Special Investigator	1	White	Male
Special Investigator Chief	1	White	Male

## **PERFORMANCE CHARACTERISTICS**

**Number of Active Licensees per Employee - 606**

.

**Total Operating Expenditures per Licensee - \$107.96**

### **Number of Persons per Active Licensee in Alabama and Surrounding States**

	Population	Licensees	Persons per Licensee
<b>Alabama</b>	<b>4,447,100</b>	<b>18,025</b>	<b>247</b>
Georgia	8,186,453	59,472	138
Mississippi	2,844,658	8,470	336
Tennessee	5,689,283	42,683	133
Florida (1)	15,982,378	174,768	91
(1) Does not include companies			

### **Investigation of Complaints**

The Alabama Real Estate Commission maintains an I-File (Investigative File) and a Formal Complaint File. The I-File includes written and telephone complaints made by the public and licensees, criminal background investigation of license applicants and commission audit finding on licensees. The complainant is notified when a complaint is assigned to an investigator. The investigators provide the commission's staff attorney with the results of the complaint investigation. The staff attorney determines if there is probable cause to file a formal complaint based upon the Alabama Real Estate Law. The complainant is notified of the staff attorney's conclusion. If there is probable cause to file a formal complaint, the attorney informs the commission's executive director. The executive director advises the commission that there is probable cause to bring a formal complaint against the licensee. The commission determines whether to conduct a hearing. The procedures for conducting a formal hearing are specified in the Real Estate License statutes.

### **Complaint Resolution**

The commission received 4,386 complaints and inquiries during FY2001-02. Sixty-two formal complaints were filed for the period. The investigator stated that it normally takes 3 to 4 months to resolve formal complaints.

## **FINANCIAL INFORMATION**

### **Fee Schedule**

Purpose	Amount Charged	Amount Authorized	Statutory Authority
License			
Salesperson			
Temporary	35.00	35.00	34-27-33c
Original	35.00	35.00	34-27-35c
Renewal	35.00	35.00	34-37-35c

<b>Purpose</b>	<b>Amount Charged</b>	<b>Amount Authorized</b>	<b>Statutory Authority</b>
Timeshare	50.00	50.00	34-27-66d
Reciprocal	35.00	35.00	34-27-32b1
Broker			
Original	45.00	45.00	34-27-35c
Renewal	45.00	45.00	34-27-35c
Company			
Original	35.00	35.00	34-27-35c
Renewal	35.00	35.00	34-27-35c
Fees			
Timeshare Registration	500.00	500.00	34-27-64a, b
Renewal	500.00	500.00	34-27-64a, b
Late Renewal (After August 31)			
Salesperson - Broker	65.00	65.00	34-27-35g
Timeshare salesperson	15.00	15.00	34-27-66e
License Transfer			
Salesperson – Broker	25.00	25.00	34-27-34b
Timeshare Salesperson	50.00	50.00	34-27-66h
Change in License	25.00	25.00	34-27-34b
Examination			
Salesperson	75.00	75.00	34-27-33a
Broker	75.00	75.00	34-27-33a
Timeshare Salesperson	75.00	75.00	34-27-66d
Recovery Fund (Initial active license)			
Temporary	30.00	30.00	34-27-33c
Original	30.00	30.00	34-27-31c
Fund less than \$500,000 (all active licensees)	30.00	30.00	34-27-31d
Research & Education			
Renewal	2.50	2.50	34-27-35d
Original	30.00	30.00	34-27-35e

<b>Purpose</b>	<b>Amount Charged</b>	<b>Amount Authorized</b>	<b>Statutory Authority</b>
Per order of the Commission If the fund balance is less Than \$500,000	30.00	30.00	34-27-31d
Real Estate Courses			
Instructors		50.00	34-27-6c
Course approval		100.00	34-27-6d
Fines			
Brokers and Salespersons			
Not less than	25.00	25.00	34-27-36a
Not more than	1,000.00	1,000.00	34-27-36a
Timeshare Licensee Violation			
Not less than	25.00	25.00	34-27-61
Not more than	1,000.00	1,000.00	34-27-61
Sellers Penalty			
Not less than	100.00	100.00	34-27-68(9)
Not more than	2,000.00	2,000.00	34-27-68(9)
Criminal Record Search	25.00		34-27-32j
Copies	10.00	10.00	34-27-32k
Law Book	3.00	Cost	41-22-4(3)
List of Licensees	100.00	Cost	
Errors and Omissions Insurance obtained Through the Commission (Repealed by Act 2003-298)		100.00	34-27-35.1e

### **Recovery Fund**

The Real Estate Commission operates a recovery fund that serves as an alternative to bonding of individual licensees (*Code of Alabama 1975*, Section 34-27-31). A fee of \$30 is collected from each person who obtains his or her initial active temporary or permanent license. If the balance in the fund falls below \$500,000, each active licensee is assessed a fee of \$30. Balances in the fund are not available for operations; however, one half of income from fund investments is used for operations, with the remainder transmitted to the University of Alabama Real Estate Research and Education Center. At September 30, 2002 the balance in the fund was \$732,001.02.

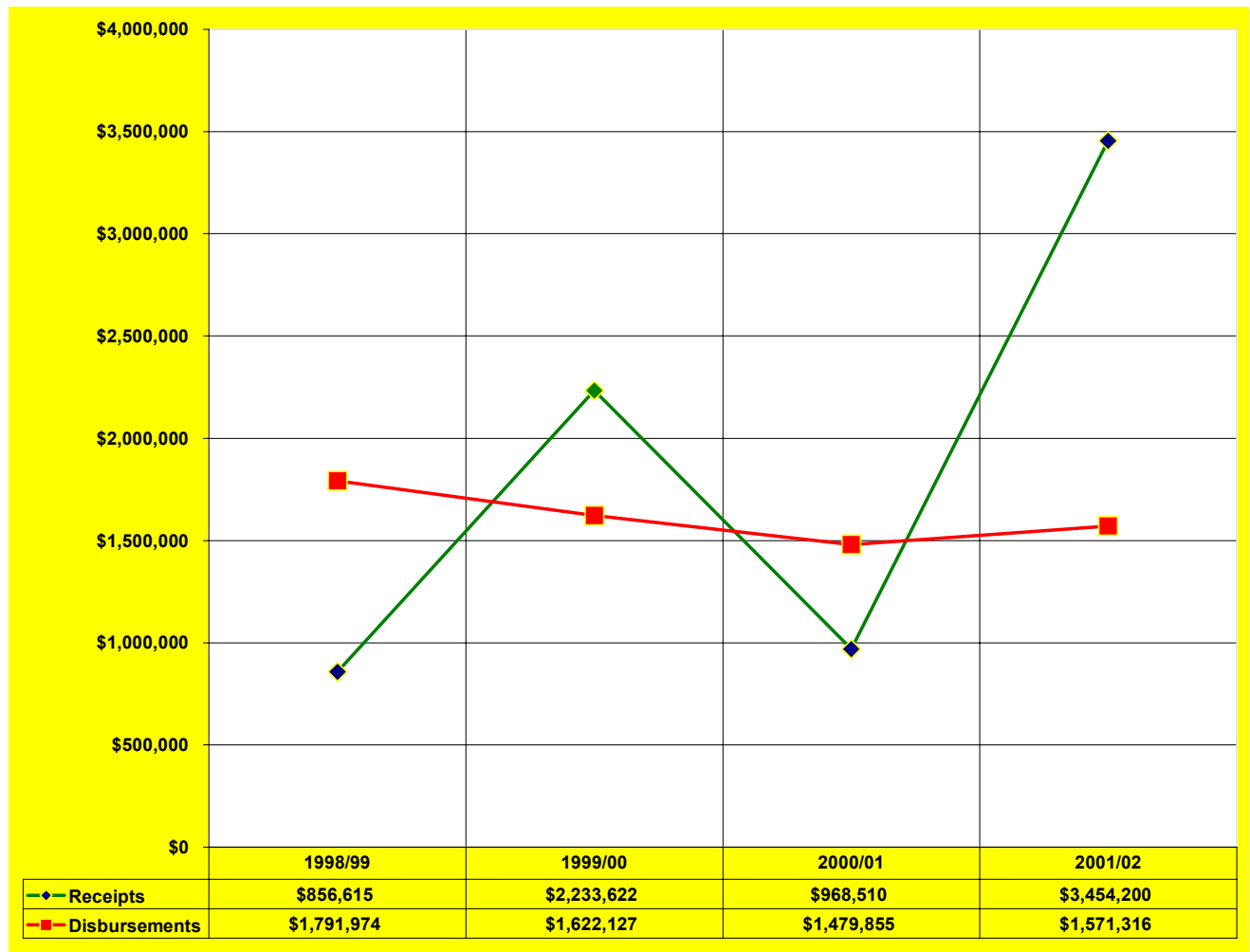
## **Schedule of Cash Receipts, Disbursements and Balances**

For the Period October 1, 1998 through September 30, 2002

	2001/2002	2000/2001	1999/2000	1998/1999
<b><u>Receipts</u></b>				
Licensing Fees	\$ 3,184,340.00	\$ 537,355.00	\$1,733,295.00	\$ 415,940.00
Examination Fees	16,350.00	181,434.00	181,716.00	189,562.50
Fines and Penalties	54,270.00	117,370.00	26,945.00	90,290.00
Interest Income	33,831.26	58,880.09	94,645.46	86,432.80
Miscellaneous Income	27,597.13	31,620.85	21,292.98	23,620.11
Research and Education	98,870.00	57,335.00	128,500.00	50,770.00
Amounts Held Pending Distribution	38,942.05	(15,485.00)	47,228.00	
Total	3,454,200.44	968,509.94	2,233,622.44	856,615.41
<b><u>Expenditures</u></b>				
Personnel	933,179.14	870,956.12	907,762.49	905,264.20
Employee Benefits	218,054.25	196,154.39	202,714.05	187,089.67
Travel in State	30,139.73	19,655.54	40,979.32	59,877.50
Travel out of State	15,658.37	16,003.62	29,883.79	42,121.39
Repairs and Maintenance	22,352.42	11,927.50	6,710.58	15,298.82
Rentals and Leases	8,763.73	8,272.50	7,436.38	5,946.90
Utilities and Communication	61,773.86	45,348.09	62,011.28	76,044.21
Professional Services	103,708.96	138,671.22	155,106.07	168,233.91
Supplies and Operating Expenses	52,235.87	16,988.44	74,050.60	103,499.41
Transportation Equipment Operation	2,817.00	2,302.64	2,771.47	3,757.47
Capital Outlay	2,142.77			2,415.00
Equipment Purchases	65,528.00		47,051.00	41,800.68
Grants and Benefits	6,216.59	19,640.19		
Non-Expenditure Disbursement		(4,225.29)		
Refunds				25,095.26
Transfer to University of Alabama	48,745.00	138,160.00	85,650.38	155,529.24
Total	1,571,315.69	1,479,854.96	1,622,127.41	1,791,973.66
Excess (Deficiency) of Receipts over Disbursements	1,882,884.75	(511,345.02)	611,495.03	(935,358.25)
Cash Balances at Beginning of Year	1,219,429.31	1,730,774.33	1,119,279.30	2,054,637.55
Cash Balances at End of Year	3,102,314.06	1,219,429.31	1,730,774.33	1,119,279.30
Reserved for Unpaid Obligations	(50,323.56)	(83,743.51)	(80,130.09)	(347,643.96)
Reserved for Capital Outlay	(245,442.23)	(247,585.00)	(247,585.00)	
Unobligated Cash Balance at Year End	\$ 2,806,548.27	\$ 888,100.80	\$ 1,403,059.24	\$ 771,635.34



## *Receipts vs. Operating Disbursements*



## **QUESTIONNAIRES**

### **Commission Members**

A questionnaire was sent to 9 commission members. Nine commissioners responded as follows:

#### **Question #1**

**Would the absence of the Alabama Real Estate Commission be detrimental to the public welfare?**

9 Yes                      \_\_\_\_\_ No                      \_\_\_\_\_ No Response

- It is essential that the Alabama Real Estate Commission continue to enforce License Law, ensure that License Education prepare individuals to be competent Real Estate Practitioners and insure that both buyers and sellers are protected.
- Most definitely! The Alabama Real Estate Commission is charged with the specific responsibility of protecting the public in matters involving real estate. The Commission carries out this duty through enforcing the many facets of Alabama real estate license law. As times brings many changes locally, nationally & globally in the way real estate trends and directions and make necessary changes in educational requirements & business practices in order that licensees are informed and knowledgeable, thus protecting the best interest of the public.
- Without doubt.
- ABSOLUTELY!! Without the Real Estate Commission there would be no governing body to police the Real Estate Industry. The possibilities of the public being taken advantage of would be endless.
- Extremely so. The existence of the Real estate Commission protects the public by having qualified person's act as licensees. The licensees are held accountable by the laws and power of the Real Estate Commission.

#### **Question #2**

**What are the most significant issues currently facing the Real Estate Commission?**

- Changes in the industry brought on by technology.
- The need for seller disclosure.
- Allowing LLC and other business organizations owned by a broker or salesman to receive a commission.
- Voiding the requirement for the commission to make error and omissions insurance available to LICENSEES, if terms and conditions cannot be met with the insurance
- Allowing continuing education courses to be taught during the month of September after the final license period
- Improving education standards for license professionals
- Increase the relevance of pre-license courses

## *Commission Member Questionnaire*

- Restrict ability of non-qualified applicants to enter industry by improving testing component and training of applicants
- Continuing quality education for all licensees. Availability of errors and omissions insurance for all licensees. Increased audits of escrow funds. Unbiased investigation of consumer complaints in a timely manner.
- The Commission's lack of jurisdiction over unlicensed real estate activity. Investigating and charging individuals and companies participating in unlicensed real estate activity is not a high priority with local legal authorities. The public stands to be harmed by such unlicensed activity and doesn't understand why the Real Estate Commission is not able to help when a problem occurs. License law should be changed to give the Commission authority to investigate and discipline through severe penalties any parties engaging in unlicensed real estate activity. (Unlicensed activity is increasing in my area. Calls to local licensing authorities are answered by impatient and ill-informed persons whose answer is usually along the line that real estate persons just want to protect their turf. This is true but much more involved than just the lost revenue. When the public is harmed, the licensee image is harmed because the public doesn't know better.)
- Repeal of E&O.
- Activity of unlicensed people. (We need the authority to regulate.)
- The most significant issues facing the commission is to be able to keep agents and brokers trained and up to date on all the regulations and laws pertaining to the Real Estate Industry. (Such as electronic marketing)
- Dealing with new technology and its use and effect on licensing and licensee actions.

### **Question #3**

**Are the licensing requirements sufficient to ensure only qualified brokers and real estate salespersons are licensed?**

- 8 Yes      1 No      \_\_\_\_\_ No Response
- We must continue to improve the principals of assessments thru job analysis, test specifications, exam development, standard setting, test administration and scoring of the knowledge required to represent both seller and buyer
  - I favor increased education and real estate experience requirements particularly for licensees preparing for becoming Qualifying Brokers. Also, all Qualifying Brokers should be required annually to attend, actively participate in and pass a 3hr. (min) class specific to the legal responsibilities and duties of being a Qualifying Broker as defined in Al. License Law. Failure to satisfactorily meet this requirement would result in forfeiture of Qualifying Broker's license. The Commissioners have often talked of the need for such a class. The class as well as authority to require attendance would do much to ensure that brokers take their supervision of licensee responsibilities seriously. The public would be better served.
  - Eliminating mandatory E&O insurance, which is progress
  - I believe they are.
  - Yes, I feel that they are. The need for continuing education still exist
  - As a whole, I believe that the requirements are OK, but there is always room for improvement. ALSO, we need some type authority to police unlicensed people practicing

## *Commission Member Questionnaire*

real estate. We have no control over these people and there are many people doing this and taking advantage of an unsuspecting public.

- At this time, I feel they are.

### **Question #4**

**Do the rules governing real estate give the Commission enough power to enforce the regulatory provisions of the real estate law?**

  5   Yes

  4   No

- We need larger fines. We need power to act when non-licensees function as brokers or agents.
- The regulatory provisions must be constantly reviewed to make sure that they keep pace with the expectations of the citizens of Alabama in their Commission, the laws it enforces and its licensees.
- It's time to increase the range of penalties for considerations when violations occur. 1. The upper limit on monetary fines should be increased. (\$5,000) 2. The Commission currently lacks authority to consider requiring specific education courses as a penalty for a licensee guilty of a specific area of license law violation. Commissioners often think that requiring an education course in that area would be most beneficial and worthwhile penalty.
- No. I feel that the Commission should have the power to suspend someone license, when they have a violation where it is clear that they need additional educations & make it contingent on them completing the classes before they could get their license back.
- We need to increase max fine amount to 2,500.00 in lieu of 1,000.00.
- I do not think that the Real Estate Commission has enough authority to strictly enforce the regulations. It needs to be able to back up the disciplinary actions more stringently. At this time, the maximum fine for any offence is \$1000.00. That amount needs to be at least \$5000.00 for serious violations.
- At this time, I feel they are. Should the number of actions by unlicensed persons begin to increase, power to exercise control over them by the Real Estate Commission may be necessary. The Real Estate Commission Power, now, is only over licensees.

**Licensees**

A questionnaire was sent to 100 licensees. Forty-seven licensees responded as follows:

**Question #1**

**Have you been satisfied with your relationship with the Alabama Real Estate Commission?**

43 Yes                      1 No                      56 No Response

- Yes. They have been most helpful when I needed advice and direction in maintaining my brokers license.
- Very satisfied. Thank you very much.
- More or less.
- Have had no personal contact
- No. They are suppose to protect the public by assisting the agent. They need to be willing & able to interpret the law & rules thereby assisting the agent – not referring us to expensive lawyers! Also, they need to work with the legislature & insurance board to bring an E&O carrier on board or available that will actually cover an agent regardless of the time frame of particular company coverage.
- Very much so. They have been very helpful each time I have called them.
- Thank you for your Licensee Questionnaire. But I would prefer to keep my opinions brief. I think the less said about these subjects the better. Besides who are we trying to fool [REDACTED] do what they may in the Mobile market!! From commission splits (protect the public ha) to agents being muscled to Contributions for ARPAC, Sunshine Kids, etc. Look, in reality most agents have little or no respect for our board. We all know it is not what you've done its who you are!!! (True Story) I remember when my mother received her real estate license in Baton Rouge, LA. It was a big deal!! The family went out to eat to celebrate her accomplishments and she and all other agents were considered to be of high integrity with high ethics. My mother ended up being a developer and sold 10 to 12 million yearly when a million was a million! Also I might add my dad was an appraiser through the Savings & Loan scandals he maintain his integrity. Today Real Estate agents have worked hard to be considered on the level of a used car salesman. By calling expired listings at 6:30am using false information for price reductions. Taking C.E. hours as a joke cram them in at the last second! Very few agents understand agency laws heck for that matter their brokers all have different interpretations. I think in short this covers some of the highlights of our over regulated some what profession. Its sad to say the bad ones far out weigh the good ones who take pride in finding a new couple their dream home. Rather then patting the client on the a-- and saying next!! Best Regards. Don't think I will sign this one.

**Question #2**

**Is the existence of the Alabama Real Estate Commission necessary to protect the public welfare?**

## *Licensee Questionnaire*

40 Yes                      2 No                      58 No Response

- Definitely Yes. Their rules and regulations for the most part are easy to understand.
- Yes, without them lawsuits and lawyers would run real estate
- Very Necessary
- I don't think so
- There must be a means of policing ourselves & I believe they do an adequate job.
- Someone must maintain to have control of any kind. If not REC, who?
- It is if it does justice to those who break the laws. There is a young woman here who was fined & supposed to have her licensed suspended for 6 months. [REDACTED] from Dothan is still selling & listing. Where is justice to wrong doers? Once she receives her sentence she should have immediately be compelled to stop practicing. This exercise by the Commission appears to be a failure. This sets a bad precedent, in my opinion.
- For unscrupulous people, yes.
- Yes...and other realtors
- Just as in it is in each state.
- I would think so. I have been very blessed not to have many problems with the public so that I have to consult with the AL Real Estate Commission, but I is nice to have their support if needed.

### **Question #3**

**Do the licensing requirements of the Alabama Real Estate Commission constitute an unnecessary restriction on your profession?**

1 Yes                      46 No                      53 No Response

- No. It would be a vast improvement & it was a "National Brokers License Agreement." With a continuing education course for compliance with State Laws this would require a nationwide continuing ed program as well so their requirements were easy to obtain.
- No, keep the lawbreakers out.
- No, but they sure do need to be reevaluated and made more up to date.
- No, they should enforce restrictions when they're been violated.
- Not to my knowledge.
- No, but in my opinion the CE hours are increasing and it needs to be capped at 12 hrs & no more.

### **Question #4**

**Are the license requirements sufficient to ensure only qualified persons are licensed?**

34 Yes                      11 No                      55 No Response

- Could be made tougher, raise the age limit.
- No, continuing ed is a joke.

## *Licensee Questionnaire*

- No, passage of a test will not insure that one could serve the needs of clients of real estate and protect them from the problems that can occur during the purchase or sell of real estate.
- No. Need much more education prior to being licensed.
- I'm not sure about this one. I have dealt with some agents who were either incompetent or lazy. I guess the system we have is probably as good as any.
- Yes, but n one should be exempt from CE hours.
- No, I feel that everyone should be required to have a background check prior to licensure to ensure that they are abiding citizens. I.e. No prior convictions or felonies! People has access to others homes once they become an agent.
- Yes (Could use more emphasis on commercial vs residential.)
- I used to think this was true but after this **Xplore Home** incident, I question whether they're getting rid of unqualified people.
- **No!!** The test covers material that is not relevant. The continuing ed. is a joke. There are way to many people in this business who don't understand contracts or the items that are most important for the public to be protected.
- Marginally – yes- standards may need to be increased.
- No, the law should not allow lawyers, sheriffs & other public officials to hold courthouse sales of real estate.

### **Question #5**

**Has any member of the Commission or its staff asked for money (other than normal fees), services or other things of value in return for licensure by the Commission?**

  0   Yes                       47  No

- Never
- Absolutely not!
- No, I haven't ever been asked for anything.
- I don't think so

## **Complainants**

Questionnaires were sent to 100 complainants. *Fifty* responded.

### **Question #1**

**Was your complaint acted on within a reasonable time?**

35 Yes                      12 No                      53 No Response

- No, we had to call back over & over to get a response.
- I really don't remember how long it was before I received the letter (my only contact) stating the realtor I complained about had broken no rules or laws (I don't remember which).
- No, real estate agent broke every rule in the book. Leading to over \$30,000.00 worth of damages to our home and nothing was done to her.
- Yes, the only thing that I can say in favor of the Commission.
- No, I felt that I was basically brushed aside and it was only after I contacted the Real Estate Commission on three occasions that they chose to acknowledge my complaint.
- Yes, but still wasn't anything done.
- If doing nothing is being acted on then it was done in a timely manner.
- Yes, but I was not satisfied. There was not possibly time to investigate.
- Yes, I immediately contacted Χελάδωελλ-Βρόνκερ, Χουβράβεν on Friday after I learned on Wednesday what was going on with my deal.
- No, I had to call several times before I was able to speak with someone. At one point it appeared that no had knowledge of having received my complaint.
- No. 1<sup>st</sup> contacted AREC investigator on 10/18/02. He called me a "sucker" and that even though my home will have to be completely altered (new roof & siding), that I should be grateful I was alive! And that Real Estate Agencies just sit & wait for suckers like me to come along & buy what they are selling!
- Yes, it was responded to promptly.
- No. Did not talk to anybody except Assistant Attorney General. Same good old boy club.
- Very good response
- Yes, I sent a letter of complaint dated 10 Jun 02. The response letter sent was dated 27 Jun 02.
- Yes. I was contacted extremely quickly.
- No, we had three (3) major complaints. You never helped us. These were all (3) on different places in auburn with (3) different agencies.
- No. Still not helping – was forced to move out (They didn't find me a place) \*The house is still not livable
- Absolutely no help at all
- There was no action taken on my complaint, only a letter of refusal to act. I am responding to the questionnaire you sent by both answering the questions and by writing this letter. I do not think the questions adequately cover the complaint response I received. I entered my complaint after having a house sold to another party while I still



had a valid contract in place. I was told there was nothing I could do about the sale. I entered my complaint with the local (Madison County) Board of Realtors and with the state. I received the same response from both agencies. Neither regarded the incidents as worthy of their time to investigate. Neither agency called or wrote to me to obtain further information, asked questions about the time-line of events or even apologized for the behavior of the Realtors, lawyers and contractors involved! In short, I was told to shut up and quit making waves. From my experience with the real estate, legal and construction organizations in Alabama, my conclusion is that all parties must be paying each other very well under the table. It was very obvious to me that nobody was willing to take a stand against the other parties, including the state regulatory body. The real estate commission is a joke that makes the frustrations of a taxpayer worse because I see it as another flagrant waste of my tax money. Once again, I pay for something I don't get! Coming from Tennessee, I find the real estate laws in Alabama to be bias toward the builders and realtors. Homebuyers in Alabama have absolutely no protection or recourse from unscrupulous "professionals" that prey on those who trust them to do a fair and honest job. The licensing boards all refused to act on my complaint. The regulatory boards told me there was nothing they could do. But the greatest surprise was that the building inspectors I spoke with all knew about the builder's reputation and that the realtors hid those facts from the buyers. If these problems are that well known, why has the commission not dealt with the problem before now? My conclusion is that the commission must be in bed with those who are constantly cheating the hard-working people who are trying to find a decent house in which to raise a family. The real estate industry obviously does not police itself. Neither does the construction industry or licensing boards. Otherwise, the licenses of realtors and contractors would be revoked when legitimate and substantiated disregard for the regulation is shown. If the past actions are any indication, you will discard this letter so the "status quo" is maintained. However, you have the opportunity to start changing the way Alabama real estate and construction laws are written and enforced. After loosing thousands of dollars to unscrupulous contractors and realtors, I would like to see somebody standup and say "enough". I have tried to make my voice heard, but have been silenced by the very officials that should have been listening. Are you man enough to stand for the laws you were hired to uphold?

## **Question #2**

**Was your complaint handled in a fair and professional manner?**

18 Yes

21 No

61 No Response

- No, we could never get a fair answer.
- No, the salesperson broke the law when she returned the earnest money without my consent and I never signed the contract for her to do that and she didn't show up for the closing.
- Not really. They basically said she was unethical but there was nothing they could do. Their investigation only resulted in realtor calling me & threatening to sue me.

- Seems to me that the AREC has been established to protect the real estate agents and companies. The attorney general rep. Is one of the group (AREC) and is there to serve AREC; not the people of Ala.
- No, the manner & rules are to protect the real estate companies, not the consumers. We have been fraud out of money by the real estates by lying as to the condition of their sales.
- I feel it was not. (Hardly anytime seemed to be spent on issue)
- No, my complaint was dismissed because, the "[REDACTED]" is the biggest real estate firm in Calhoun County." Therefore, evidently they can do no wrong, however, the manner in which they handle my real estate transaction was wrought with fraud and deceit.
- No, because she came and tried to blame the other people involved.
- I don't know
- No, I sent in a letter explaining my position. By the time I came before the Commission, none had read my letter. When I tried to follow up I was told to take it to court.
- No, I was never contacted for further information. I also gave my neighbors name because she contacted the realtor I had complained against and she was never contacted either.
- I was very fair with the way I handled this matter. The unfair position was held by [REDACTED] and the Alabama Real Estate Commission.
- It was handle in a professional manner but I do not believe it was fair. If agents can do as they please and expect no recourse – what is the point of the Commission. His license should be revoked.
- Absolutely Not...The investigator was shockingly candid. He was unconcerned even when I started crying, begging for justice to what had been done to us. I was then asked (days after my formal letter of complaint was received) if [REDACTED] could review my letter so he could respond.
- Fair Maybe. The investigator was very nice& courteous.
- It didn't seem that the Commission cared about our complaint. I'm not sure that they ever truly considered taking any action on it.
- The people were friendly & professional. I do not think my complaint was considered very seriously.
- No. In fact I feel the Asst Atty Gen was arrogant & demeaning in his communications.
- I was shocked to find the AREC did not handle a complaint such as mine. What does it do?
- Yes, very much so.
- Professional – yes. Fair – questionable.
- No, we were never ask to give our side of the story. Every answer from the agent was a lie. Yes I could have proven it. My homeowners could have help but, we were lied to. This was the 1<sup>st</sup> complaint.
- No. Once the house was inspected by the code inspectors he sent the real estate co. a list of things with a deadline. They're still not fixed & I was push out!
- The complaint was handled as if I was an outsider who tried to enter a private club. There was no professionalism in trying to check out the complaint at all.

### Question #3

**Do you think the Commission and its employees did all it could to resolve your complaints?**

13 Yes

28 No

59 No Response

- No, only if you are certain real estate person that could lie her way into any thing.
- Not all
- I don't know their regulations so I can't answer this.
- Why not have a hearing. It is easy to draft a letter and stop most complaints (especially individuals without \$\$ and lawyers). The real estate company and agent lied!
- They did nothing.
- No, I do not. I was not asking for money, damages or legal action. I was asking for someone to monitor these real estate companies, such as [REDACTED] Realty, who prey on youngsters and care not at all.
- No, I was merely dismissed and NEVER contacted for further follow up and investigation.
- No, they just skimmed over it & didn't seem to have the time to spend on it.
- No, because there was no investigation about the complaint.
- No, their answers were very short.
- No, blew right past it. No concern about life facts. My letter.
- No, I was not satisfied. My complaint was swept under the rug and never investigated.
- Absolutely not!!! [REDACTED] said that he would talk to [REDACTED] and if there was something mishandled he would let me know. He returned my call to say that they did nothing wrong, that I did not have a legitimate complaint; yet he called [REDACTED] at [REDACTED] Realty to say that it was [REDACTED] fault. The AREC contacted [REDACTED] to discuss this and of course [REDACTED] convinced them there was not a problem. The Commission should have contacted other realtors to ask their experience working with [REDACTED] owes me and I will not rest until I am compensated.
- No, I provided information that clearly showed the agent managing my property my property had breached his agreement with me. Nothing was done and what was said made absolutely no sense. I do not feel that the system work.
- Absolutely Not...Even when I proved Century 21 lied to them and sent them a false document. They still refused to help me. I swear I almost had a stroke when I received my final letter stating that they could not find any reason for misconduct. We know from the first call to [REDACTED], that they would not be fair. His comments, to me, were insensitive & unprofessional.
- I think they should have had an eyeball meeting.
- No, their letter stated that they were powerless to do anything. Why have a Commission if it has no power?
- W/in its mandate, I suppose so.
- Yes, they did
- I can't really say who solve the complaint, but it was solve and I was thankful

- No – the investigation was very weak. The response letter mentioned one phone call made to my alleged violator. He gave erroneous information to the investigator. Based on the Assistant Attorney General found insufficient cause to believe the Realty was in violation of AL Real Estate License Law. My written documentation was largely ignored. My manager was not contacted even though I gave his phone number.
- No, we felt no one cared. The city inspector condemned the place on Glenn Ave. The Realty knew how bad the place was but only promised to repair. We called the inspector after the gas Co red tag the place. The power was hooked up wrong to this duplex. You can confirm w/Alabama Power. The gas could not be turned on due to fire hazard. The Realty lied from the time we signed the lease, until we had the house condemned. This can be confirmed. I can not wait to leave the City of Auburn as the real estate people we have dealt w/are all greedy. They charge a high price to live w/no regards for safety or rules for them. I blame you guys for not doing your job. If you want major details & prove to help better your dept. I could provide if it would help. But only if you want to better yourself. Note: For parents that had a choice of college I highly suggested they not choose Auburn Alabama to live in. I know first hand as I have five children four in college at present.
- Not at all! The only good thing was the list & deadline for repairs, but instead of fixing them, they had me leave with no place to go. And on top of that they still required that I paid the rent even though they had broken my lease w/o plausible cause.
- Yes – But since our meeting w/ AREC attorney and investigator in Montgomery in Aug, 02 we have learned that the person we filed the complaint against is no longer with the Real Estate Agency. I called the broker & told him that I had helped his company be rid of the agent, but that it did not solve my financial shortage. He chose not to help us by reversing the entire transaction.
- I do not believe the Commission holds the power over the realtors if my complaint was any indication.

#### **Question # 4**

**Do you think the commission is providing a valuable service to the citizens of Alabama?**

14 Yes                      20 No                      66 No Response

- I used to
- No, they are there to call upon, but only help if its not complicated.
- Not if this instance is typical
- No, when all is in it together
- The AREC serves only to frustrate citizens and promote distrust of the government.
- No, if the Examiners of Public Accounts were to act for the consumers I'm sure once in the hands of Sunset Committee of Ala. Legislature we should be reimbursed for the fraud they are getting away with.
- No, not at all.
- No, I feel it lets people, who are connected to the "right" people, get away with unsavory and disgusting behaviors.

- No, it is a joke for those of us who are law-abiding citizens and respect the parameters of the law. As a result of my experience, I will NEVER own real estate in the state of Alabama. This of course is a tragedy as I am a member of the United States Department of Homeland Security and will be transplanted within this area for some. There is no wonder why Alabama has financial and fiscal worries – this is how they treat people who could and would have the means to infuse vitality into the state economy.
- No, I only see that they enforce rules on escrow accounts & bad checks. There's no teeth in the Commission.
- Not this citizen
- Not in my case.
- Yes, because it does take care of confusion.
- I don't think they are providing a service at all. They are getting paid for nothing.
- No. You are not there just to listen. You are there to listen, research, and resolve. If you can't stand up for individuals, then who are we suppose to contact. Everything that I tried to discuss was cut off short. And I was so much as told to forget it. Not their exact words, but that was their meaning.
- In my case no. It could be a valuable service if honesty and integrity is followed. It appears that the Commission works for the real estate agents and not the people. It is a case of asking the fox to watch the hens.
- No!! It is a disgrace. We begged them to deal w/ [REDACTED]. They lied & misrepresented us & we knew fr. The 1<sup>st</sup> phone call who's side they were on! We were guaranteed a 50yr. Roof Warranty & when the roof started to decay, they could not find the warranty so they produced a false document.
- I hope.
- It is a valuable entity to have if it actually reviews & handles the complaints. In the letter sent to me I was given the impression that the Commission was for the most part powerless.
- This was my only experience & the outcome was not favorable.
- No - I feel there was bias & prejudice as shown by the Assistant Attorney General's comments.
- Negligible
- Wonderful service!
- Not to me perhaps to others.
- Not in my experience.
- No, we felt you guys knew someone in Auburn. We never had a chance. You did not act like you cared.
- Possible in SOME areas but not mine
- Absolutely not

#### **Question # 5**

**Do you think the laws and rules regulating the profession of real estate sales in Alabama are adequate?**

9 Yes

30 No

61 No Response

- The problem that I filed a claim about is still not solved.
- No, This “Buyer Beware” quote is crazy not to mention unfair. It is supposed to be fun to buy a new house, especially for 1<sup>st</sup> time homebuyers!
- Some
- No, not when realtors are allowed to act in this manner.
- No... or perhaps it is the administration and enforcement of the laws & regs. In my case the existing laws were not enforced. The entire system is Bad! How does one apply to sit on the AREC Board? I would like to serve and improve the system. Thanks for the questionnaire.
- No, we need a representative to help us the consumers to receive the fair treatment we deserve. Our claims should be processed to help us.
- Not, when you allow an agent to get away with forging leases, removing a house off the market because she felt like it, renting a home without owner's permission.  
 [REDACTED] of Gulf Shores took it totally upon herself to rent out our home in [REDACTED] Alabama. She signed a lease with the [REDACTED], people that we the owners of the home never approved to be allowed to move into our house. She led the [REDACTED] to believe that they were there legally even though no deposit was collected, nor were any of our requests even met. Our request was simply who were these people, we asked for a background check etc... before we would even consider renting the home. Miss [REDACTED] just placed them into our home and calls us up and tells us – you have renters. These deadbeats that she put into our home destroyed it to the tune of \$30,000.00 in estimated damages and not a thing was done to Miss [REDACTED]. She is still selling real estate. Miss [REDACTED] also took it upon herself to pull our home off the market, which was totally in breach of the sale contract. We never even had a clause in the contract that allowed the home to be rented she breached every part of the contract. We feel that she is not qualified to be selling or renting real estate as she follows her own rules. Does what ever she wants with other people's property. We feel that her license should have been revoked and she no longer be allowed to sell or have any dealings within the real estate business. As far as the Alabama Real Estate Commission told us they see nothing wrong with what she has done.
- No, I do not. Obviously, I am absolutely furious at the fact that only money is a concern. At the heart of my issue was a man who takes advantage of others. Since I was given some money back, nothing else mattered to these people.
- No, My two brothers & I told Mr. [REDACTED] initially – we would only purchase if all three parties would enter the agreement (purchase & loan) & property taxes were paid in full & free of any liens. He would not refund \$1,000.00 cash paid down (I paid, he gave me no receipt and only his signature was on offer. I did not sign. Also I had just left surgery & was on strong medication. Please reopen & investigate. [REDACTED] has several unethical complaints that have been filed against him. (He paid a friend – that doesn't have a real estate license a cash referral fee for advising me of the lot & trailer for sale in Baldwin County) & he paid her out of the money I gave him.
- No. Yours is a state that evidently protects criminal behavior on the part of your real estate agents.
- Yes, When enforced
- No, because if there is a complaint someone should come out and do an investigation.
- Yes, if we only had some one who would enforce them.

- No, if my real estate agent was allowed to do what he did & get away with it I should say not.
- When you mail in information to be reviewed before the hearing, it should be reviewed. Everything is not always clean cut. I worked five years to become a broker. All of that was wiped out because my ex-wife didn't forward my mail and I didn't pay two payments. Five years gone – start over?
- No, I had a legitimate complaint. Anyone could see that what took place with the house I was interested in was underhanded. I would think illegal. Realtors are well on their way of having the same reputation as lawyers.
- No, if the laws were more strict and followed there would not be so many people unhappy with [REDACTED]. He is known for taking personal items from buyers as a part of his commission, not standing by his word, even scams through the banks, from what I understand. We the people, are totally dependent on agents and brokers and we are getting screwed.
- I can't say, since I do not believe they were fairly and adequately followed in my case. After being wronged by the real estate agent, I had every confidence that I would receive some reprieve from the Commission but this was not the case. I was truly disappointed.!
- I don't know enough about the law & rules to have an opinion, however, merely discussing my problem with the RE Com. Was adequate to prompt the realtor to refund my binder which had been held for over a year pending a good title to the property & other conditions to the purchase agreement.
- No!! It is disgraceful that people like myself & husband can be treated like we were. We are hard working, honest & only wanted what was fair & just treatment. This entire ordeal has made me physically ill. We bought what we thought was our dream house & now it has become a financial nightmare. If only the Commission had truly researched the false document Century 21 sent them, they would have known they lied! We were simply brushed away like dirt.
- In my case no. The judge we had to go before told me that he has never seen nothing like this. He also said that I have been had by 3 men & they were working together. He didn't understand why a broker would tolerate such an agent as this & the agent was not looking out for his client's best interest right up a contract as he did.
- No, there should be more laws & rules regarding real estate ethics.
- Must not be if a realtor can get away with what they did to us.
- No. My complaint was not found against the complaintee. I felt that the regulation was in place to realize a violation, but the director did not uphold my complaint. I was a guess of Alabama. I won't be back-----
- Yes I do!
- Not familiar with all your laws. My Guess is that Condo management could be much improved in the area of enforcement of existing laws.
- No. Very few REALTORS follow the rules, making it even harder to earn a living for those of us who do.
- I cannot answer these questions as I was told by the investigator, St. of AL Real Estate Comm., that they could not tell me what the outcome of my complaint was. I still do not know what was done.
- No, I had an agent lie directly to me about a matter and it was not handled properly.

- No, The fact that the City of Auburn is not required to change the locks for a new tenant is only asking for trouble. This means that every previous tenant has a key to my apartment. Yes, we were robbed!!!
- Absolutely NOT. There are a few of those laws I'd like to personally discuss with someone who can change them & "alter" them.
- At this point in time – don't know!
- Alabama leaves the homebuyer without any protection at all. Buyers and sellers are both at the mercy of the realtor. There appears to be a total lack of laws and enforcement that the realtor must comply with to continue to maintain their license.
-



## **APPENDICES**

### **Statutory Provisions - ACT 2003-298**

- Repeals Mandatory Errors & Omissions Insurance
- Redefines a company to include a sole proprietorship or other lawfully constructed business organization
- Modifies provisions for receiving proof of continuing education
- Clarifies grounds for disciplinary action



1 HB34  
2 52170-2  
3 By Representative Johnson  
4 RFD: Boards and Commissions  
5 First Read: 04-MAR-03  
6 PFD: 02/20/2003

ACT No. 2003- 298

RECEIVED  
JUL 16 2003  
GOVERNOR'S  
OFFICE

1  
2 ENROLLED, An Act,

3 To amend Sections 34-27-2, 34-27-32, 34-27-35,  
4 34-27-36, and to repeal Section 34-27-35.1, Code of Alabama  
5 1975, relating to the licensing of real estate brokers and  
6 salesmen by the Real Estate Commission, to allow a limited  
7 liability corporation or other lawful business organization  
8 owned by a broker or salesman to receive a payment or  
9 commission on a sale, to repeal the requirements concerning  
10 errors and omissions insurance and remove references to the  
11 requirements, and to remove the prohibition concerning  
12 continuing education course work.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 34-27-2, 34-27-32, 34-27-35, and  
15 34-27-36, Code of Alabama 1975, are amended to read as  
16 follows:

17 "§34-27-2.

18 "(a) For purposes of Articles 1 and 2 of this  
19 chapter, the following terms shall have the respective  
20 meanings ascribed by this section:

21 "(1) ASSOCIATE BROKER. Any broker other than a  
22 qualifying broker.

23 "(2) BROKER. Any person licensed as a real estate  
24 broker under the provisions of Articles 1 and 2 of this  
25 chapter.

1           "(3) COMMISSION. The Alabama Real Estate Commission,  
2 except where the context requires that it means the fee paid  
3 to a broker or salesperson.

4           "(4) COMMISSIONER. A member of the commission.

5           "(5) COMPANY. Any sole proprietorship, corporation,  
6 partnership, or branch office, or lawfully constituted  
7 business organization as the Legislature may provide for from  
8 time to time, which is licensed as a company under Articles 1  
9 and 2 of this chapter.

10          "(6) ENGAGE. Contractual relationships between a  
11 qualifying broker and an associate broker or salesperson  
12 licensed under him or her whether the relationship is  
13 employer-employee, independent contractor, or otherwise.

14          "(7) INACTIVE LICENSE. A license which is being held  
15 by the commission office by law, order of the commission, at  
16 the request of the licensee, or which is renewable but is not  
17 currently valid because of failure to renew.

18          "(8) LICENSEE. Any broker, salesperson, or company.

19          "(9) LICENSE PERIOD. That period of time beginning  
20 on October 1 of a year designated by the commission to be the  
21 first year of a license period and ending on midnight  
22 September 30 of the year designated by the commission as the  
23 final year of that license period.

24          "(10) PERSON. A natural person.

25          "(11) PLACE OF BUSINESS.

1           "a. A licensed broker living in a rural area of this  
2 state who operates from his or her home, provided that he or  
3 she sets up and maintains an office for the conduct of the  
4 real estate business, which shall not be used for living  
5 purposes or occupancy other than the conduct of the real  
6 estate business. The office shall be used by the broker only  
7 and not as a place of business from which any additional  
8 licensee operates under his or her license. The office shall  
9 have a separate business telephone, separate entrance, and be  
10 properly identified as a real estate office.

11           "b. All licensees located within the city limits or  
12 police jurisdiction of a municipality shall operate from a  
13 separate office located in the city limits or police  
14 jurisdiction. The office shall have a business telephone, meet  
15 all other regulations of the Real Estate Commission, and be  
16 properly identified as a real estate office. Hardship cases  
17 may be subject to waiver of this regulation upon application  
18 and approval by the commission.

19           "c. All business records and files shall be kept at  
20 the place of business as required by law or Real Estate  
21 Commission rules.

22           "(12) QUALIFYING BROKER. A broker under whom a  
23 corporation, partnership, or branch office is licensed, or a  
24 broker licensed to do business as a sole proprietorship who is  
25 responsible for supervising the acts of the company or

1 proprietorship and all real estate licensees licensed  
2 therewith.

3 "(13) RECOVERY FUND. The Alabama Real Estate  
4 Recovery Fund.

5 "(14) SALESPERSON. Any person licensed as a real  
6 estate salesperson under Articles 1 and 2 of this chapter.

7 "(b) The licensing requirements of Articles 1 and 2  
8 of this chapter shall not apply to any of the following  
9 persons and transactions:

10 "(1) Any owner in the managing of, or in  
11 consummating a real estate transaction involving, his or her  
12 own real estate or the real estate of his or her spouse or  
13 child or parent.

14 "(2) An attorney-at-law performing his or her duties  
15 as an attorney-at-law.

16 "(3) Persons acting without compensation and in good  
17 faith under a duly executed power of attorney authorizing the  
18 consummation of a real estate transaction.

19 "(4) Persons or a state or federally chartered  
20 financial institution acting as a receiver, trustee,  
21 administrator, executor, or guardian; or acting under a court  
22 order or under authority of a trust instrument or will.

23 "(5) Public officers performing their official  
24 duties.

1           "(6) Persons performing general clerical or  
2 administrative duties for a broker so long as the person does  
3 not physically show listed property.

4           "(7) Persons acting as the manager for an apartment  
5 building or complex. However, this exception shall not apply  
6 to a person acting as an on-site manager of a condominium  
7 building or complex; or

8           "(8) Persons licensed as time-share sellers under  
9 Article 3 of this chapter performing an act consistent with  
10 that article.

11           "(9) Transactions involving the sale, lease, or  
12 transfer of cemetery lots.

13           "\$34-27-32.

14           "(a) A license for a broker or a salesperson shall  
15 be registered to a specific real estate office and shall be  
16 issued only to, and held only by, a person who meets all of  
17 the following requirements:

18           "(1) Is trustworthy and competent to transact the  
19 business of a broker or salesperson in a manner that  
20 safeguards the interest of the public.

21           "(2) Is a person whose application or license has  
22 not been rejected or revoked in any state within two years  
23 prior to date of application on any grounds other than failure  
24 to pass a written examination. Any applicant whose license  
25 has been revoked shall meet all the requirements imposed on an



1 original applicant for a license and shall not be relicensed  
2 without the approval of the commissioners.

3 "(3) Is at least 19 years old.

4 "(4) Is a citizen of the United States or is an  
5 alien with permanent resident status.

6 "(5) Is a person who, if a nonresident, agrees to  
7 sign an affidavit stating the following and in the following  
8 form:

9 "I, as a nonresident applicant for a real estate  
10 license and as a licensee, agree that the Alabama Real Estate  
11 Commission shall have jurisdiction over me in any and all of  
12 my real estate related activities the same as if I were an  
13 Alabama resident licensee. I agree to be subject to  
14 investigations and disciplinary actions the same as Alabama  
15 resident licensees. Further, I agree that civil actions may be  
16 commenced against me in any court of competent jurisdiction in  
17 any county of the State of Alabama.

18 "I hereby appoint the Executive Director or the  
19 Assistant Executive Director of the Alabama Real Estate  
20 Commission as my agent upon whom all disciplinary, judicial,  
21 or other process or legal notices may be served. I agree that  
22 any service upon my agent shall be the same as service upon me  
23 and that certified copies of this appointment shall be deemed  
24 sufficient evidence and shall be admitted into evidence with  
25 the same force and effect as the original might be admitted. I

1 agree that any lawful process against me which is served upon  
 2 my agent shall be of the same legal force and validity as if  
 3 personally served upon me and that this appointment shall  
 4 continue in effect for as long as I have any liability  
 5 remaining in the State of Alabama. I understand that my agent  
 6 shall, within a reasonable time after service upon him or her,  
 7 mail a copy of the service by certified mail, return receipt  
 8 requested, to me at my last known business address.

9 "I agree that I am bound by all the provisions of  
 10 the Alabama Real Estate License Law the same as if I were a  
 11 resident of the State of Alabama.

12 \_\_\_\_\_  
 13 Legal signature of appli-  
 cant"

14 The commission may reject the application of any  
 15 person who has been convicted of or pleaded guilty or nolo  
 16 contendere to a felony or a crime involving moral turpitude.

17 "(b) (1) A person who holds a current real estate  
 18 salesperson license in another state, including persons who  
 19 move to and become residents of Alabama, shall apply for a  
 20 reciprocal salesperson license on a form prescribed by the  
 21 commission. A person who holds a current broker license in

1 another state, including persons who move to and become  
2 residents of Alabama, shall apply for a reciprocal broker  
3 license on a form prescribed by the commission. The applicant  
4 shall submit proof that he or she has a current real estate  
5 license in another state as evidenced by a certificate of  
6 licensure, together with any other information required by the  
7 commission. Applicants for a reciprocal license shall not be  
8 subject to the examination or temporary license requirements  
9 of Section 34-27-33. A person who holds a reciprocal license  
10 shall show proof of completion of continuing education either  
11 by meeting the requirements of Section 34-27-35 or by showing  
12 proof that his or her other state license remains active in  
13 that state. The fees for issuance and renewal of a reciprocal  
14 license shall be the same as those for original licenses  
15 pursuant to Section 34-27-35. The recovery fund fee for  
16 issuance of a reciprocal license shall be the same as for an  
17 original license pursuant to Section 34-27-31, ~~and errors and~~  
18 ~~omissions insurance requirements shall be the same as provided~~  
19 ~~in Section 34-27-35.1.~~

20 "(2) A person who holds a current Alabama license  
21 who moves to and becomes a resident of the state shall within  
22 10 days submit to the commission notice of change of address  
23 and all other license status changes.

24 "(c) A person who does not hold a current real  
25 estate broker license in another state desiring to be a real

1 estate broker in this state shall apply for a broker's license  
2 on a form prescribed by the commission which shall specify the  
3 real estate office to which he or she is registered. Along  
4 with the application, he or she shall submit all of the  
5 following:

6 "(1) Proof that he or she has had an active real  
7 estate salesperson's license in any state for at least 24  
8 months of the 36 month period immediately preceding the date  
9 of application.

10 "(2) Proof that he or she is a high school graduate  
11 or the equivalent.

12 "(3) Proof that he or she has completed a course in  
13 real estate approved by the commission, which shall be a  
14 minimum of 60 clock hours.

15 "(4) Any other information requested by the  
16 commission.

17 "(d) A person who does not hold a current real  
18 estate salesperson license in another state desiring to be a  
19 real estate salesperson in this state shall apply for a  
20 salesperson's license with the commission on a form prescribed  
21 by the commission which shall specify the real estate office  
22 to which he or she is registered. Along with the application  
23 he or she shall furnish all of the following:

24 "(1) Proof that he or she is a high school graduate  
25 or the equivalent.

1           "(2) Proof that he or she has successfully completed  
2 a course in real estate approved by the commission, which  
3 shall be a minimum of 60 clock hours.

4           "(3) Any other information required by the  
5 commission.

6           "(e) An application for a company license for a  
7 corporation, partnership, or branch office shall be made by a  
8 qualifying broker on a form prescribed by the commission. The  
9 qualifying broker shall be an officer, partner, or employee of  
10 the company.

11           "(f) An applicant for a company or broker license  
12 shall maintain a place of business.

13           "(g) If the applicant for a company or broker  
14 license maintains more than one place of business in the  
15 state, he or she shall have a company license for each  
16 separate location or branch office. Every application shall  
17 state the location of the branch office and the name of its  
18 qualifying broker. Each branch office shall be under the  
19 direction and supervision of a qualifying broker licensed at  
20 that address. No person may serve as qualifying broker at more  
21 than one location. The qualifying broker for the branch  
22 office and the qualifying broker for the corporation,  
23 partnership, or sole proprietorship shall share equal  
24 responsibility for the real estate activities of all licensees  
25 assigned to the branch office.

1           "(h) No person shall be a qualifying broker for more  
2     than one company or for a company and on his or her own behalf  
3     unless:

4           "(1) All companies for which he or she is and  
5     proposes to be the qualifying broker consent in writing.

6           "(2) He or she files a copy of the written consent  
7     with the commission.

8           "(3) He or she will be doing business from the same  
9     location.

10          "A person licensed under a qualifying broker may be  
11     engaged by one or more companies with the same qualifying  
12     broker.

13          "(i) A company license shall become invalid on the  
14     death or disability of a qualifying broker. Within 30 days  
15     after the death or disability, the corporation, or the  
16     remaining partners or the successor partnership, if any, may  
17     designate another of its officers, members, or salespersons to  
18     apply for a license as temporary qualifying broker. The person  
19     designated as temporary qualifying broker shall either be a  
20     broker or have been a salesperson for at least one year prior  
21     to filing the application. If the application is granted, the  
22     company may operate under that broker for no more than six  
23     months after the death or disability of its former qualifying  
24     broker. Unless the company designates a fully licensed broker

1 as the qualifying broker within the six months, the company  
2 license shall be classified inactive by the commission.

3 "(j) The commission may charge any applicant a fee  
4 for a criminal record search of the applicant in the same  
5 amount as is charged the commission by the Department of  
6 Public Safety or other agency for the search.

7 "(k) The commission may charge a fee of ten dollars  
8 (\$10) for furnishing any person a copy of a license,  
9 certificate or other official record of the commissioner.

10 "§34-27-35.

11 "(a) The commission shall prescribe the form and  
12 content of license certificates issued. Each qualifying  
13 broker's license certificate shall show the name and business  
14 address of the broker. The license certificate of each active  
15 salesperson or associate broker shall show his or her name and  
16 address. The license certificate of each active salesperson or  
17 associate broker shall be delivered or mailed to his or her  
18 qualifying broker. Each license certificate shall be kept by  
19 the qualifying broker and shall be publicly displayed at the  
20 address which appears on the license certificate.

21 "(b) The commission may establish a one-year or  
22 multi-year license period.

23 "(c) (1) The fee for a temporary license shall be one  
24 hundred fifty dollars (\$150). The original fee for a broker's  
25 license shall be one hundred fifty dollars (\$150) and,

1 beginning with the license period effective October 1, 2002,  
2 the renewal fee for a broker's license shall be seventy-five  
3 dollars (\$75) per year for each year of the license period.  
4 The original fee for each salesperson's license shall be  
5 sixty-five dollars (\$65) per year for each year or portion of  
6 a year remaining in the respective license period, and the  
7 renewal fee for each salesperson's license shall be sixty-five  
8 dollars (\$65) per year for each year of the license period.  
9 The original fee for each company license shall be sixty-five  
10 dollars (\$65) per year for each year or portion of a year  
11 remaining in the respective license period, and the renewal  
12 fee for each license shall be sixty-five dollars (\$65) per  
13 year for each year of the license period.

14           "(2) Beginning with the license period effective  
15 October 1, 2004, the renewal fee for a broker's license shall  
16 be ninety-five dollars (\$95) per year for each year of the  
17 license period. The original fee for each salesperson's  
18 license shall be eighty-five dollars (\$85) per year for each  
19 year or portion of a year remaining in the respective license  
20 period, and the renewal fee for each salesperson's license  
21 shall be eighty-five dollars (\$85) per year for each year of  
22 the license period. The original fee for each company license  
23 shall be eighty-five dollars (\$85) per year for each year or  
24 portion of a year remaining in the respective license period,



1 and the renewal fee for each license shall be eighty-five  
2 dollars (\$85) per year for each year of the license period.

3 "(d) The renewal research and education fee shall be  
4 two dollars and fifty cents (\$2.50) per year for each year of  
5 the license period, and shall be paid at the time of license  
6 renewal by all brokers and salespersons in addition to the  
7 license renewal fees set out in this section. Collection of  
8 this fee shall begin and shall apply to all broker and  
9 salesperson renewals on and after August 1, 1996, except that  
10 brokers who hold more than one broker's license shall pay the  
11 fee for only one license at each renewal.

12 "(e) The original research and education fee shall  
13 be thirty dollars (\$30) and shall be paid at the time of all  
14 applications received on and after October 15, 1995, for  
15 issuance of an original broker's license, and shall be paid at  
16 the time of all applications received on and after October 15,  
17 1995, for issuance of a temporary salesperson's license. This  
18 is in addition to the original license fees set out in this  
19 section. This thirty dollar (\$30) original research and  
20 education fee is a one-time fee which no person shall be  
21 required to pay more than once.

22 "(f) The license of a salesperson who is  
23 subsequently issued a broker's license automatically  
24 terminates upon the issuance of his or her broker's license  
25 certificate. The salesperson's license certificate shall be

1 returned to the commission in order for a broker's license to  
2 be issued. No refund shall be made of any fee or recovery  
3 fund deposit pertaining to the salesperson's, broker's, or  
4 company's license.

5 "(g) The commission shall prescribe a license  
6 renewal form, which shall accompany renewal fees, ~~proof of~~  
7 ~~errors and omissions insurance coverage, if applicable, and~~  
8 ~~proof of completion of not less than 15 clock hours of~~  
9 ~~approved continuing education course work, if applicable, and~~  
10 ~~all~~ which shall be filed on or before August 31 of the final  
11 year of each license period in order for the respective  
12 license to be renewed on a timely basis for the following  
13 license period. If any of the foregoing are filed during the  
14 period from September 1 through September 30 of the final year  
15 of a license period, the one hundred fifty dollar (\$150)  
16 penalty set out below shall be paid in addition to the renewal  
17 fees. Failure to meet this September 30 deadline shall result  
18 in the license being placed on inactive status on the  
19 following October 1, and the license shall be subject to all  
20 reactivation requirements. Reactivations shall be processed in  
21 the order received as evidenced by postmark or delivery date.  
22 Certified or registered mail may be used for reactivation in  
23 these cases. Licensees filing during the period from September  
24 1 of the final year of a license period through September 30  
25 of the initial year of a license period shall pay the required

1 license fee, plus a penalty of one hundred fifty dollars  
2 (\$150).

3 "(h) The renewal form shall be mailed by the  
4 commission to the licensee's place of business, if an active  
5 licensee, or to his or her residence if an inactive licensee,  
6 prior to August 1 of the final year of each license period.  
7 Each licensee shall notify the commission in writing of any  
8 change in his or her business or residence address within 30  
9 days of the change.

10 "(i) Every license shall expire at midnight on  
11 September 30 of the final year of each license period. An  
12 expired license may be renewed during the 12-month period  
13 following the license period for which the license was  
14 current. A licensee who fails to renew before the end of the  
15 12-month period following the license period for which the  
16 license was issued has a lapsed license, and shall be subject  
17 to all requirements applicable to persons who have never been  
18 licensed, however, the commission may upon determination of  
19 hardship, allow later renewal upon payment of all fees and  
20 penalties. An inactive license must be renewed in the same  
21 manner as an active license.

22 "(j)(1) Each applicant for renewal of an active  
23 salesperson or broker license issued by the commission shall,  
24 on or before ~~August 31~~ September 30 of the final year of each  
25 license period, submit proof of completion of not less than 15

1 clock hours of approved continuing education course work to  
2 the commission, in addition to any other requirements for  
3 renewal. Failure to meet this deadline shall result in the  
4 license being placed on inactive status on the following  
5 October 1, and the license shall be subject to all  
6 reactivation requirements. Reactivations shall be processed in  
7 the order received as evidenced by postmark or delivery date.  
8 Certified or registered mail may be used for reactivation in  
9 this case. ~~The commission shall not approve any continuing~~  
10 ~~education course work to be taught in any part during the~~  
11 ~~month of September of the final year of a license period. The~~  
12 ~~commission shall not accept any continuing education course~~  
13 ~~work taken in any part during the month of September of the~~  
14 ~~final year of a license period.~~ Proof of attendance at the  
15 course work, whether or not the applicant attained a passing  
16 grade in the course, shall be sufficient to satisfy  
17 requirements for renewal. The 15 clock hours' course work  
18 requirement shall apply to each two-year license renewal, and  
19 hours in excess of 15 shall not be cumulated or credited for  
20 the purpose of subsequent license renewals. The commission  
21 shall develop standards for approval of courses, and shall  
22 require certification of the course work of the applicant.

23 "Time served as a member of the state Legislature  
24 during each license renewal period shall be deemed the

1 equivalent of the 15 hours course work and shall satisfy the  
2 requirements of this subsection.

3 "(2) This section shall apply to renewals of  
4 licenses which expire after September 30, 1986. An applicant  
5 for first renewal who has been licensed for not more than one  
6 year shall not be required to comply with this section for the  
7 first renewal of the applicant's license. Any licensee  
8 reaching the age of 65 on or before September 30, 2000, and  
9 having been licensed 10 years prior to that date shall be  
10 exempt from this section.

11 "(3) Continuing education shall not result in a  
12 passing or failing grade.

13 "(k) A licensee may request that the commission  
14 issue his or her license to inactive status. Inactive licenses  
15 shall be held at the commission office until activated. No act  
16 for which a license is required shall be performed under an  
17 inactive license.

18 "\$34-27-36.

19 "(a) The commission or its staff may on its own, or  
20 on the verified complaint in writing of any person,  
21 investigate the actions and records of a licensee. The  
22 commission may issue subpoenas and compel the testimony of  
23 witnesses and the production of records and documents during  
24 an investigation. If probable cause is found, a formal  
25 complaint shall be filed and the commission shall hold a

1 hearing on the formal complaint. The commission shall revoke  
2 or suspend the license or impose a fine of not less than  
3 twenty-five dollars (\$25) nor more than one thousand dollars  
4 (\$1,000), or both, or reprimand the licensee in each instance  
5 in which the licensee is found guilty of any of the following  
6 acts:

7 "(1) Procuring or attempting to procure, a license,  
8 for himself or herself or another, by fraud,  
9 misrepresentation, or deceit, or by making a material  
10 misstatement of fact in an application for a license.

11 "(2) Engaging in misrepresentation or dishonest or  
12 fraudulent acts when selling, buying, trading, or renting real  
13 property of his or her own or of a spouse or child or parent.

14 "(3) Making a material misrepresentation, or failing  
15 to disclose to a potential purchaser or lessee any latent  
16 structural defect or any other defect known to the licensee.  
17 Latent structural defects and other defects do not refer to  
18 trivial or insignificant defects but refer to those defects  
19 that would be a significant factor to a reasonable and prudent  
20 person in making a decision to purchase or lease.

21 "(4) Making any false promises of a character likely  
22 to influence, persuade, or induce any person to enter into any  
23 contract or agreement.

24 "(5) Pursuing a continued and flagrant course of  
25 misrepresentation or the making of false promises through

1 agents or salespersons or any medium of advertising or  
2 otherwise.

3 "(6) Publishing or causing to be published any  
4 advertisement which deceives or which is likely to deceive the  
5 public, or which in any manner tends to create a misleading  
6 impression or which fails to identify the person causing the  
7 advertisement to be placed as a licensed broker or  
8 salesperson.

9 "(7) Acting for more than one party in a transaction  
10 without the knowledge and consent in writing of all parties  
11 for whom he or she acts.

12 "(8)a. Failing, within a reasonable time, to  
13 properly account for or remit money coming into his or her  
14 possession which belongs to others, or commingling money  
15 belonging to others with his or her own funds.

16 "b. Failing to deposit and account for at all times  
17 all funds belonging to, or being held for others, in a  
18 separate federally insured account or accounts in a financial  
19 institution located in Alabama.

20 "c. Failing to keep for at least three years a  
21 complete record of funds belonging to others showing to whom  
22 the money belongs, date deposited, date of withdrawal, and  
23 other pertinent information.

24 "(9) Placing a sign on any property offering it for  
25 sale, lease, or rent without the consent of the owner.

1           "(10) Failing to voluntarily furnish a copy of each  
2 listing, contract, lease, and other document to each party  
3 executing the document with reasonable promptness.

4           "(11) Paying any profit, compensation, commission,  
5 or fee to, or dividing any profit, compensation, commission,  
6 or fee with, anyone other than a licensee or multiple listing  
7 service. This provision shall not prevent an associate broker  
8 or salesperson from owning any lawfully constituted business  
9 organization, including, but not limited to, a corporation or  
10 limited liability company or limited liability corporation,  
11 for the purpose of receiving payments contemplated in this  
12 subsection. The business organization shall not be required to  
13 be licensed under this chapter, and shall not engage in any  
14 other activity requiring a real estate license.

15           "(12) Paying or receiving any rebate from any person  
16 in a real estate transaction.

17           "(13) Inducing any party to a contract to break the  
18 contract for the purpose of substituting a new contract, where  
19 the substitution is motivated by the personal gain of the  
20 licensee.

21           "(14) If the licensee is a salesperson or associate  
22 broker, accepting a commission or other valuable consideration  
23 for performing any act for which a license is required from  
24 any person except his or her qualifying broker.



"(15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing on the advertising in letters at least as large as the name of the salesperson or associate broker; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing on the advertising in letters at least as large as the name of the salesperson or associate broker.

"(16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.

"(17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.

"(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

1           "(19) Violating or disregarding any provision of  
2 this chapter or any rule, regulation, or order of the  
3 commission.

4           "(20) If a broker, accepting a "net listing"  
5 agreement for sale of real property or any interest therein. A  
6 "net listing" is one that stipulates a net price to be  
7 received by the owner with the excess due to be received by  
8 the broker as his or her commission.

9           "(21) Misrepresenting or failing to disclose to any  
10 lender, guaranteeing agency, or any other interested party,  
11 the true terms of a sale of real estate.

12           "(22) Failing to inform the buyer or seller at the  
13 time an offer is presented that he or she will be expected to  
14 pay certain closing costs and the approximate amount of those  
15 costs.

16           "(23)a. Having entered a plea of guilty or nolo  
17 contendere to, or having been found guilty of or convicted of  
18 a felony or a crime involving moral turpitude.

19           "b. Having a final money judgment rendered against  
20 him or her which results from an act or omission occurring in  
21 the pursuit of his or her real estate business or involves the  
22 goodwill of an existing real estate business.

23           "(24) Offering free lots or conducting lotteries for  
24 the purpose of influencing a party to purchase or lease real  
25 estate.

1           "(25) Failing to include a fixed date of expiration  
2     in a written listing agreement or failing to leave a copy of  
3     the agreement with the principal.

4           "(26) Conduct which constitutes or demonstrates  
5     dishonest dealings, bad faith, or untrustworthiness.

6           "(27) Acting negligently or incompetently in  
7     performing an act for which a person is required to hold a  
8     real estate license.

9           "(28) Failing or refusing on demand to produce a  
10    document, book, or record in his or her possession concerning  
11    a real estate transaction conducted by him or her for  
12    inspection by the commission or its authorized personnel or  
13    representative.

14          "(29) Failing within a reasonable time to provide  
15    information requested by the commission during an  
16    investigation or after a formal complaint has been filed.

17          "(30) Failing without cause to surrender to the  
18    rightful owner, on demand, a document or instrument coming  
19    into his or her possession.

20          "(31) If a qualifying broker or company, failing to  
21    keep in their files copies of all contracts, leases, listings,  
22    and other records pertinent to real estate transactions for a  
23    period of three years.

24          "(b) If it appears that a person, firm, corporation,  
25    or any business entity has engaged, or is about to engage, in

1 an act or practice constituting a violation of Article 1 or 2  
 2 of this chapter or any rule or order of the commission, the  
 3 commission, through the Attorney General, may institute legal  
 4 actions to enjoin the act or practice and to enforce  
 5 compliance with Articles 1 and 2 of this chapter or any rule  
 6 or order of the commission. To prevail in an action, it shall  
 7 not be necessary to allege or prove either that an adequate  
 8 remedy at law does not exist or that substantial or  
 9 irreparable damage would result from the continued violation.

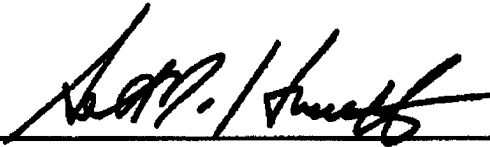
10 "(c) The commission shall notify the licensee and  
 11 qualifying broker in writing regarding the complaint.

12 "(d) The commission shall notify the complainant,  
 13 licensee, and qualifying broker in writing regarding the  
 14 disposition of the complaint."

15 Section 2. Section 34-27-35.1, Code of Alabama 1975,  
 16 is hereby repealed.

17 Section 3. This act shall become effective  
 18 immediately following its passage and approval by the  
 19 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives



President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 18-MAR-03.

Greg Pappas  
Clerk

Senate

16-JUN-03

Passed

APPROVE. 6/18/03  
TIME 4:34 pm  
BSR R.L.  
COVINGTON

Alabama Secretary Of State

Act Num....: 2003-298  
Bill Num...: H-34



## **Statutory Provisions (Code of Alabama)**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§ 34-27-1. Short title. [Annotations](#)**

This chapter may be cited as the Alabama Real Estate License Law of 1951. (Acts 1951, No. 422, p. 745, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1.)

### **ANNOTATIONS**

#### **1. Generally**

This chapter requires that a real estate salesperson be licensed under a qualifying broker. A qualifying broker is held responsible to the commission and to the public for the acts of each salesman licensed under him. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).

**Cited** in *Shook v. Davis-Day Timber Co.*, 331 So.2d 667 (Ala.1976).

#### **§ 34-27-2. Definitions; exemptions from chapter. [Historical Notes](#) [References](#) [Annotations](#)**

(a) For purposes of Articles 1 and 2 of this chapter, the following terms shall have the respective meanings ascribed by this section:

- (1) Associate broker. Any broker other than a qualifying broker.
- (2) Broker. Any person licensed as a real estate broker under the provisions of Articles 1 and 2 of this chapter.
- (3) Commission. The Alabama Real Estate Commission, except where the context requires that it means the fee paid to a broker or salesperson.
- (4) Commissioner. A member of the commission.
- (5) Company. Any corporation, partnership, or branch office licensed as a company under Articles 1 and 2 of this chapter.
- (6) Engage. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.
- (7) Inactive license. A license which is being held by the commission office by law, order of the commission, at the request of the licensee, or which is renewable but is not currently valid because of failure to renew.
- (8) Licensee. Any broker, salesperson, or company.
- (9) License period. That period of time beginning on October 1 of a year designated by the commission to be the first year of a license period and ending on midnight September 30 of the year designated by the commission as the final year of that license period.
- (10) Person. A natural person.

(11) Place of business.

a. A licensed broker living in a rural area of this state who operates from his or her home, provided that he or she sets up and maintains an office for the conduct of the real estate business, which shall not be used for living purposes or occupancy other than the conduct of the real estate business. The office shall be used by the broker only and not as a place of business from which any additional licensee operates under his or her license. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.

b. All licensees located within the city limits or police jurisdiction of a municipality shall operate from a separate office located in the city limits or police jurisdiction. The office shall have a business telephone, meet all other regulations of the Real Estate Commission, and be properly identified as a real estate office. Hardship cases may be subject to waiver of this regulation upon application and approval by the commission.

c. All business records and files shall be kept at the place of business as required by law or Real Estate Commission rules.

(12) Qualifying broker. A broker under whom a corporation, partnership, or branch office is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company or proprietorship and all real estate licensees licensed therewith.

(13) Recovery fund. The Alabama Real Estate Recovery Fund.

(14) Salesperson. Any person licensed as a real estate salesperson under Articles 1 and 2 of this chapter.

(b) The licensing requirements of Articles 1 and 2 of this chapter shall not apply to any of the following persons and transactions:

(1) Any owner in the managing of, or in consummating a real estate transaction involving, his or her own real estate or the real estate of his or her spouse or child or parent.

(2) An attorney-at-law performing his or her duties as an attorney-at-law.

(3) Persons acting without compensation and in good faith under a duly executed power of attorney authorizing the consummation of a real estate transaction.

(4) Persons or a state or federally chartered financial institution acting as a receiver, trustee, administrator, executor, or guardian; or acting under a court order or under authority of a trust instrument or will.

(5) Public officers performing their official duties.

(6) Persons performing general clerical or administrative duties for a broker so long as the person does not physically show listed property.

(7) Persons acting as the manager for an apartment building or complex. However, this exception shall not apply to a person acting as an on-site manager of a condominium building or complex; or

(8) Persons licensed as time-share sellers under Article 3 of this chapter performing an act consistent with that article.

(9) Transactions involving the sale, lease, or transfer of cemetery lots.

(Acts 1951, No. 422, p. 745, § 3; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 3; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3.; Acts 1996, No. 96-791, p. 1471, § 1.)



## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, in subsection (a), rearranged the subdivisions so that the defined terms appear in alphabetical order and renumbered them accordingly, and in subdivision (4), as so renumbered, substituted "Commissioner" for "Commission"; and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.03, Real Estate Board; General Provisions: License Requirements.

19 Ala. Admin. Code 790-X-1-.04, Real Estate Board; General Provisions: Clerical/Office Employees.

### RESEARCH REFERENCES

#### **Am Jur:**

12 Am Jur 2d, Brokers § 1 et seq.

#### **Annotations:**

Attorney's right to act as real estate broker without having been licensed as such. 23 A.L.R.4th 230.

## ANNOTATIONS

### **1. Generally**

Broker is a fiduciary and holds a position of trust and confidence. He cannot put himself in a position antagonistic to his principal's interest, by fraudulent conduct, acting adversely to his client's interests, or by failing to communicate information he may possess or acquire which is or may be material to his employer's advantage, or otherwise. *Cooper & Co., Inc. v. Bryant*, 440 So.2d 1016 (Ala.1983).

### **2. "Real estate broker"**

Corporation selling its own realty is not "real estate broker" and corporate employee selling real estate for corporation is not a "real estate salesman" and is not required to have a salesman's license. *Strumpf v. State*, 31 Ala.App. 409, 18 So.2d 104 (Ala.App.1944).

Under an agreement whereby defendant promised to pay plaintiff a commission of a certain percent on purchase price of all standing timber located by plaintiff and brought to defendant's attention and purchased by defendant, plaintiff, while meeting terms of defendant's promise, was not acting as a "real estate broker" within the meaning of this section. *Rattray v. W.P. Brown & Sons Lumber Co.*, 29 Ala.App. 93, 192 So. 285 (Ala.App.1939), certiorari denied 238 Ala. 548, 192 So. 288.

### **3. Effect of lack of license on contract**

A contract whereby defendant agreed to pay a commission to plaintiff on purchase price of all standing timber located and brought to defendant's attention by plaintiff and purchased by defendant was not void because plaintiff did not have a license, since plaintiff was not a "real estate broker" within meaning of this section requiring a license. *Rattray v. W.P. Brown & Sons Lumber Co.*, 29 Ala.App. 93, 192 So. 285 (Ala.App.1939), certiorari denied 238 Ala. 548, 192 So. 288.

**Cited** in *Waldrop v. Langham*, 260 Ala. 82, 69 So.2d 440 (1953); *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *King v. Earley*, 274 Ala. 116, 145 So.2d 831 (1962); *Adair v. Alabama Real Estate Comm'n*, 53 Ala.App. 621, 303 So.2d 119 (Civ. App. 1974); *Dillard v. Pan-American Invest., Inc.*, 347 So.2d 990 (Ala.1977); *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979); *Holloway v. Jackson*, 412 So.2d 774 (Ala.1982).

**§ 34-27-3. Nonresident may not act except in cooperation with licensed broker of state; written co-brokerage agreement to be filed. [References](#) [Annotations](#)**

(a) A licensed broker of another state may act as co-broker with a licensed broker of this state by executing a written agreement specifying each parcel of property covered by the agreement if the state in which the nonresident broker is licensed offers the same privileges to licensees of this state.

(b) Whenever an Alabama broker enters into a co-brokerage agreement with a nonresident broker to perform in Alabama any of the acts described in Section 34-27-30 the Alabama broker shall file within 10 days with the commission a copy of each such written agreement. By signing the agreement, the nonresident broker agrees to abide by Alabama law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him in any court of competent jurisdiction in any county of this state in which a claim may arise. (Acts 1951, No. 422, p. 745, § 7; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 7; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3.)

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.05, Real Estate Board; General Provisions: Out-of-State Co-Brokerage Agreement.

### RESEARCH REFERENCES

**American Digest System:**

Brokers 1, 3.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 7, 14-24.

## ANNOTATIONS

### 1. Generally

This section clearly provides that a person must be licensed as a real estate broker in this state before he can auction real estate. This requires the Alabama broker to be the "auctioneer" or crier of the property at the sale. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

## **2. Purpose**

Intent of legislature was not to permit out-of-state people to auction property in Alabama merely by entering into a cooperating agreement with an Alabama broker. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

## **3. Cooperative agreement**

One of the principal incidents of a cooperating agreement would be the sharing of the fee for the auctioning of property in Alabama. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

There are aspects of a cooperating agreement warranting participation by the out-of-state broker so as to justify his part of the fee, but the actual crying of the property is not one of them. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

**Cited** in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *Georgia Asso. of Realtors v. Alabama Real Estate Com.*, 678 F.Supp. 854 (M.D.Ala.1987).

## **§ 34-27-4. Real Estate Commission Revenue Fund and Real Estate Commission Proportionate Fund. [Historical Notes](#) [References](#)**

All fees, fines, charges, or other money, except as provided in Section 34-27-31, and except as provided in this section for multi-year licenses, collected by the commission shall be deposited in the State Treasury to the credit of the Real Estate Commission Revenue Fund and shall be disbursed by the state Comptroller on order of the executive director at the direction of the commission. A proportionate share of all money collected by the commission as license fees during each fiscal year of a multi-year license period or during the renewal period immediately preceding that first year, and all fees collected for research and education, shall be reserved in the State Treasury in the Real Estate Commission Proportionate Fund by the state Comptroller to be disbursed quarterly to the Real Estate Research and Education Center with the remainder to be disbursed for commission expenses incurred in that fiscal year or the subsequent fiscal years of that license period. The proportion for each fiscal year shall be determined by dividing the amount of money collected by the commission as license fees each fiscal year or during the renewal period immediately preceding the first year by the number of years within the multi-year license period. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments in the proportionate fund shall be deposited into the Real Estate Commission Revenue Fund for expenditure by the commission. All other money including penalty fees collected by the commission shall be disbursed during the fiscal year in which they are collected. The state Comptroller and State Treasurer are directed to pay all expenses incurred by the commission in performing its responsibilities and exercising its authority from the Real Estate Commission Revenue Fund in the State Treasury on warrants of the state Comptroller

drawn on the State Treasury on order of the executive director. The commission may not incur expenses that exceed the total fees and charges collected and paid into the State Treasury; or that exceed the amount appropriated by the Legislature. No funds shall be withdrawn or expended except as budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96. All money remaining unexpended in the Real Estate Commission Revenue Fund at the end of each fiscal year shall be retained by the commission for the following fiscal year.

(Acts 1951, No. 422, p. 745, § 11; Acts 1953, No. 513, p. 647; Acts 1963, No. 290, p. 734; Acts 1971, No. 2485, p. 3966, § 11; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1995 amendment**, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, rewrote this section.

## REFERENCES

### RESEARCH REFERENCES

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

### **§ 34-27-5. County list of licensees. [References](#)**

The commission shall on the request of the probate judge of any county of this state provide the judge with a list of persons who are licensed by the commission and who reside in that county.

(Acts 1951, No. 422, p. 745, § 15; Acts 1971, No. 2485, p. 3966, § 15; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## § 34-27-6. Real estate courses. [Historical Notes](#) [References](#) [Annotations](#)

(a) The commission may approve and regulate schools that offer commission approved prelicense, postlicense, and continuing education courses.

(b) The commission may approve, sponsor, contract for or conduct, or assist in sponsoring or conducting real estate courses for licensees, may charge fees, and may incur and pay the necessary expenses in connection therewith.

(c) The commission may approve and regulate instructors who teach the commission approved prelicense, postlicense, and continuing education courses. The commission shall establish and collect fees as determined necessary, not to exceed fifty dollars (\$50) per instructor annually, to approved instructors who teach commission approved courses.

(d) The commission may approve courses and establish and collect fees as determined necessary, not to exceed one hundred dollars (\$100) per application, to review each course.

(e) The commission may establish one-year or multi-year approval periods for schools and instructors.

(f) The commission shall promulgate rules and regulations as necessary to accomplish the purpose of this section in accordance with the Administrative Procedure Act.

(Acts 1951, No. 422, p. 745, § 16; Acts 1971, No. 2485, p. 3966, § 16; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1996, No. 96-791, p. 1471, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1996 amendment**, effective May 29, 1996, designated the existing text as subsection (b) and in such subsection, as so designated, inserted "may charge fees,"; and added subsections (a), (c), (d), (e), and (f).

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.06 through 790-X-1-.11, 790-X-1-.14 through 790-X-1-.19, 790-X-1-.21, Real Estate Board; General Provisions.

19 Ala. Admin. Code 790-X-2-.03, Real Estate Board; Licensure: Issuance Of Temporary And Original Salesperson Licenses.

### RESEARCH REFERENCES

#### American Digest System:

Brokers 3.

#### Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

## § 34-27-7. Real Estate Commission -- Created; composition; qualifications of members; appointment; terms; compensation; organization; executive director and assistant

(a) There is created the Alabama Real Estate Commission. The commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate as hereinafter provided. The Governor's appointments to the commission, except for the appointment of the consumer member made pursuant to subsection (e), shall be made from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership, as evidenced by the filing of a verified list of paid members with the Secretary of State within 10 days of April 6, and annually by December 31 of each year thereafter. At least one of the persons nominated for each commission seat shall not be a member of the Real Estate Society or trade association. The Governor shall appoint one of the three nominated persons within 30 days following receipt of the list. If the Governor does not make an appointment within 30 days, the said Real Estate Society or trade association shall provide the Governor a list of three additional nominees. The Governor, upon receipt of the second list of nominees, shall appoint one of the six nominees within 30 days following receipt of the nominees. Appointments made at times when the Senate is not in session shall be effective ad interim. Any appointment made by the Governor while the Senate is in session shall be submitted not later than the third legislative day following the date of appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature.

(b) Ad interim appointments may be made by the Governor when the Legislature is not in session only for vacancies occurring by reason of death or resignation of a board member. Ad interim appointments shall be confirmed by the Senate at the next following regular or special session of the Legislature. Failure by the Senate to confirm shall result in a vacancy on the board that shall be filled by appointment by the Governor and confirmation by the Senate while the Legislature is in session. Any vacancy not acted upon shall remain a vacancy until it is filled at a subsequent session of the Legislature in the manner prescribed in this section.

(c) Each of the original seven appointees and their successors shall have been a resident and citizen of this state for at least 10 years prior to his or her appointment and whose vocation for at least 10 years shall have been that of a real estate broker or real estate salesperson. No person convicted of a violation of any federal or state real estate license law shall be eligible to serve. Not more than one member from any United States Congressional District shall be appointed to serve at the same time. The members of the commission shall serve five-year terms. On and after April 7, 1988, no member shall serve for more than two consecutive terms of office, except, however, each member shall hold office until his or her successor is appointed by the Governor and confirmed by the Senate. The period of time any member serves after the expiration of his or her term of office while awaiting the appointment and Senate confirmation of his or her successor shall not be considered as a consecutive term of office in determining the two consecutive terms of office limitation herein provided. All appointments shall expire on September 30 of the final year of a term, or on the date a successor to the member is appointed and confirmed. If a member does not serve his or her full term, the Governor shall appoint, in the same manner as original appointments are made, subject to confirmation by the Senate, a member to serve the unexpired portion of the term.

(d) On September 30, 1988, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a Black member who meets all of the other requirements of subsection (c), who shall serve no more than two consecutive terms of

office, who shall be a full voting member, and who may be appointed from any congressional district in the state. Each successor Black member shall be appointed from a different congressional district, to be rotated equally among the remaining congressional districts.

(e) On October 1, 1996, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a consumer member. The consumer member of the commission shall serve no more than two consecutive terms of office, shall be a full voting member, and shall be initially appointed from any congressional district in the state. Each successor consumer member shall be appointed from a different congressional district, on a rotating basis, among the remaining congressional districts. The consumer member shall meet all of the following requirements, that he or she:

(1) Is 21 years of age or older.

(2) Has been a resident and citizen of this state for at least 10 years prior to appointment.

(3) Is a registered voter in this state.

(4) Has no felony convictions.

(5) Is the owner of real property.

(6) Has not been a licensed real estate broker or salesperson for the 10 years preceding appointment.

(7) Is not related to, by blood or marriage, or employed by, a real estate licensee.

(f) On the appointment of a new commissioner, the commission shall meet and select from its members a chair.

(g) Each member of the commission shall receive as full compensation three hundred dollars (\$300) per month. The members of the commission, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission.

(h) The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence. The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state.

(i) The commission shall adopt a seal by which it shall authenticate records and documents. Copies of all records and documents in the office of the commission duly certified and authenticated by the seal of the commission shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the commission shall be open to public inspection during reasonable hours and under reasonable circumstances.

(j) No commissioner shall be liable for damages resulting from any act performed in carrying out his or her duties as a commissioner.

(Acts 1951, No. 422, p. 745, § 4; Acts 1971, No. 2485, p. 3966, § 4; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1981, No. 81-386, p. 572, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, §

3; Acts 1996, No. 96-791, p. 1471, § 1.)



## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, in subsection (a), in the second sentence substituted "nine" for "eight", and in the third sentence inserted ", except for the appointment of the consumer member made pursuant to subsection (e),"; in subsection (c), substituted "his or her" for "his" in three places; redesignated subsections (e) through (i) as subsections (f) through (j), respectively, and added a new subsection (e); and made nonsubstantive changes.

#### **Code Commissioner's Notes**

Section 2 of Acts 1989, No. 89-284 provides: "The existence and functioning of the Real Estate Commission, created and functioning pursuant to sections 34-27-1 through 34-27-69, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1992, No. 92-177, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Section 34-27-1 to 34-27-38, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-283, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Sections 34-27-1 to 34-27-38, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2000-128, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Sections 34-27-1 to 34-27-88, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

## REFERENCES

### CROSS REFERENCES

As to the Real Estate Commission Building Authority, see §§ 41-10-420 et seq.

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.01, Real Estate Board; General Provisions: Organization.

### RESEARCH REFERENCES

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### 1. Generally

Appeal from decree entered in quo warranto proceeding to determine right of real estate commission to hold office was properly dismissed as moot where challenged member's term on the commission had expired shortly before appeal was argued and there was therefore no longer any justiciable case or controversy between the parties. *State ex rel. Eagerton v. Corwin*, 359 So.2d 767 (Ala.1977).

**Cited** in *Danner v. Crawford*, 527 So.2d 711 (Ala.1988).

#### **§ 34-27-8. Real Estate Commission -- Quorum; rules and regulations; agency disclosure clause.** [Historical Notes](#) [References](#) [Annotations](#)

(a) A majority of the commission members shall constitute a quorum for the conduct of commission business. The commission may adopt and enforce all rules and regulations pursuant to the state administrative procedure statutes necessary for the administration of this chapter, and to otherwise do all things necessary and convenient for effecting this chapter.

(b) In addition to the powers granted in this section, the commission may adopt and enforce rules and regulations governing the requirements of agency disclosure by licensed brokers and salespersons.

(c) Each offer to purchase prepared after August 1, 1998, shall have prominently displayed the following AGENCY DISCLOSURE clause which shall be completed and initialed as indicated:

The listing company \_\_\_\_\_ is:

(Two blocks may be checked)

- ☐ An agent of the seller.
- ☐ An agent of the buyer.
- ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- ☐ Assisting the \_\_\_\_\_ buyer \_\_\_\_\_ seller as a transaction broker.

The selling company \_\_\_\_\_ is:

(Two blocks may be checked)

- ☐ An agent of the seller.
- ☐ An agent of the buyer.
- ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- ☐ Assisting the \_\_\_\_\_ buyer \_\_\_\_\_ seller as a transaction broker.

(Acts 1951, No. 422, p. 745, § 19; Acts 1971, No. 2485, p. 3966, § 19; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-211, p. 341, § 10; Act 98-618, p. 1359, § 1.)

## HISTORICAL NOTES

## HISTORY

### **Amendment notes:**

**The 1995 amendment**, effective October 1, 1996, in subsection (c) substituted "after October 1, 1996" for "after April 6, 1989," deleted "either in pre-printed form or typed in or hand-written in" following "prominently displayed," added "which shall be completed and initialed as indicated," and rewrote the agency disclosure clause.

**The 1998 amendment**, effective August 1, 1998, in subsection (c) rewrote the agency disclosure clause.

### **Code Commissioner's Notes**

In 1998, the Code Commissioner in subsection (c) inserted fill-in-the-blank lines and checkoff boxes to properly format the disclosure form and to correct a clerical error in the enrolling process.

## REFERENCES

### **ADMINISTRATIVE CODE**

19 Ala. Admin. Code 790-X-1-.01 through 790-X-1-.21, Real Estate Board; General Provisions.

19 Ala. Admin. Code 790-X-2-.01 through 790-X-2-.04, 790-X-2-.07, 790-X-2-.13 through 790-X-2-.23, Real Estate Board; Licensure.

19 Ala. Admin. Code 790-X-3-.01 through 790-X-3-.14, Real Estate Board; Disciplinary Actions.

### **RESEARCH REFERENCES**

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### **1. Generally**

Regulation promulgated by state commission pursuant to the authority reposed in it by this section is to be enforced as if it were a duly enacted statute, so long as the regulation is not unreasonable or inconsistent with the statute from whence it was born. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

**Cited** in *American Real Estate Institute, Inc. v. Alabama Real Estate Com.*, 605 F.2d 931 (5th Cir. Ala.1979).

**§ 34-27-9. Real Estate Commission -- Bond of director and executive secretary. Repealed by Acts 1985, No. 85-750, § 2, effective May 29, 1985. § 34-27-10. Chapter cumulative.**

The requirements of this chapter shall be in addition to the requirements of existing or future laws or ordinances of any state, county or municipality taxing, licensing or regulating real estate

brokers or salesmen.

(b) A licensee under this chapter shall not be subject to the requirements of Section 40-12-150 when he sells, offers to sell or advertises for sale realty situated in another state or county.

(c) Licensees under this chapter shall be exempt from the provisions of Section 5-19-22. (Acts 1951, No. 422, p. 745, § 21; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 21; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## **§ 34-27-11. Penalties. [References](#) [Annotations](#)**

(a) Any person or corporation which violates any provision of this chapter commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(b) Any person who files with the commission any notice, statement or other document or information required under the provisions of this chapter which is false or untrue or contains any material misstatement of fact commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(Acts 1951, No. 422, p. 745, § 18; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## **REFERENCES**

### **RESEARCH REFERENCES**

#### **Annotations:**

Wrongful refusal of license upon proper application therefor as defense to prosecution for acting without license. 30 A.L.R.2d 1006.

Fraud or misrepresentation: Damages or losses sustained by vendor responsible to vendee, broker's liability for. 61 A.L.R.2d 1237.

Damages: right of principal to recover punitive damages for agent's or broker's breach of duty. 67 A.L.R.2d 952.

Necessity for real estate broker's license as affected by fact that sale is of both real and personal property. 82 A.L.R.3d 1139.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

#### **American Digest System:**

Brokers 5.

#### **Corpus Juris Secundum:**

C.J.S. Brokers § 13.

## **ANNOTATIONS**

### **CASENOTES**

**Cited** in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *Richland Development Co. v. Staples*, 295 F.2d 122 (5th Cir. Ala.1961).

## ARTICLE 2. LICENSES.

### § 34-27-30. Required. [References](#) [Annotations](#)

It shall be unlawful for any person, partnership, corporation, or branch office, for a fee, commission or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration from another, to do any of the following unless he is licensed under Articles 1 and 2 of this chapter:

- (1) Sell, exchange, purchase, rent, or lease real estate;
- (2) Offer to sell, exchange, purchase, rent, or lease real estate;
- (3) Negotiate or attempt to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;
- (4) List or offer or attempt or agree to list real estate for sale, rental, lease, exchange, or trade;
- (5) Auction, offer or attempt or agree to auction, real estate;
- (6) Buy or sell or offer to buy or sell, or otherwise deal in options on real estate;
- (7) Aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate;
- (8) Procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate;
- (9) Procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease or rental of real estate; or
- (10) Present himself or be presented as being able to perform an act for which a license is required.

(Acts 1951, No. 422, p. 745, § 2; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.03, Real Estate Board; General Provisions: License Requirements.

### RESEARCH REFERENCES

#### **Am Jur:**

12 Am Jur 2d, Brokers § 8 et seq.

#### **Annotations:**

Brokers: Public regulation or control. 10 A.L.R.2d 950.

Licenses: Validity of statute or ordinance requiring real estate brokers to procure license. 39 A.L.R.2d 606.

Competition: Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices. 90 A.L.R.2d 7.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 A.L.R.3d 523.

Recovery back of money voluntarily paid to unlicensed person required by law to have

occupational or business license or permit to make contract. 74 A.L.R.3d 637.  
Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property. 82 A.L.R.3d 1139.

**American Digest System:**

Brokers 3, 42.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24, 131-135.

## ANNOTATIONS

### 1. Applicability

These sections are not framed, as they might have been, to apply to all transactions affecting land in the forum state; the coverage is limited to Alabama transactions. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

### 2. "Auction"

"Auction" is public sale of property to highest bidder, by one licensed and authorized for that purpose. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

### 3. License requirement as applied to corporations

A corporation may, in compliance with the requirements of this section, be issued a broker's license, and must have been issued such license in order to be able to enforce a contract calling for payment to it of a broker's commission. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957).

Where none of the officers of a corporation have been issued a broker's license, although the corporation had a licensee in its employ, that did not meet the requirements of this section. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957).

### 4. Enforceability of contract

As regards recovery of compensation, contract of real estate salesman without license held unenforceable. *Knight v. Watson*, 221 Ala. 69, 127 So. 841 (1930); *Waldrop v. Langham*, 260 Ala. 82, 69 So.2d 440 (1953); *Bickley v. Van Antwerp Realty Corp.*, 271 Ala. 117, 122 So.2d 275 (1959).

The failure of a real estate broker to procure the broker's license required by this section, as under the prior law, renders unenforceable any contract entered into by such broker which provides for payment of a commission. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957).

### 5. Recovery of commission

Where the sales of real estate and of personalty were severable, involving two transactions between separate legal entities, the unlicensed broker was entitled to the commission calculated on the sales price of the stock, and the court considered it unnecessary to determine the question of whether an unlicensed broker is precluded from commission when the sale of real estate forms

an incident in a single or nonseverable transaction. *Abramson v. Gulf Coast Jewelry & Specialty Co.*, 1971, 445 F.2d 802.

Even if a broker violated this section and was therefore subject to fine and imprisonment, it would not be necessarily inconsistent for him to recover his commission under an executed foreign contract. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

Failure of a licensed Missouri real estate broker to obtain a license in Alabama pursuant to this section did not bar recovery of a commission for procuring purchasers of Alabama land, where both the formation of the contract and the major portions of its performance occurred outside Alabama and where the contract was valid and binding in the place where the agreement was made. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

If a person acts in violation of the statute governing licensing requirement for real estate brokers, then any agreement to compensate that person for services mentioned in the statute is void and unenforceable. *Ex parte Ledford*, 761 So.2d 990 (Ala.2000).

Burden was on plaintiffs, under averments alleging that they were duly licensed agents and seeking to recover commission allegedly due under contract for sale of realty, of showing that they found and tendered purchaser who was ready, willing and able to purchase property on defendant's terms and that they were licensed brokers authorized to procure such purchaser. *Applebaum v. Zeigler*, 246 Ala. 281, 20 So.2d 510 (Ala.1945).

Action to recover broker's commission, want of real estate agent's license was a defense that should have been pleaded and proven by defendant. *Garber v. Yeend*, 31 Ala.App. 365, 17 So.2d 874 (Ala.App.1944), certiorari denied 245 Ala. 509, 17 So.2d 875.

Where vendor brought motion for interpleader against rival claimants to broker's commission, one claimant could not plead that contract between rival claimant and vendor was invalid because rival claimant was not licensed as broker, since his property rights were not affected by invalidity of contract, he being required to prove that he was procuring cause of sale to recover commission. *Marx v. Lining*, 231 Ala. 445, 165 So. 207 (Ala.1935).

**Cited** in *Southern Metal Treating Co. v. Goodner*, 271 Ala. 510, 125 So.2d 268 (1960); *Dorman v. Pan-American Invest., Inc.*, 625 F.2d 605 (5th Cir. Ala.1980); *Liles v. Flatley*, 643 So.2d 947 (Ala.1994).

**Cited** in *Southern Metal Treating Co. v. Goodner*, 271 Ala. 510, 125 So.2d 268 (1960); *Dorman v. Pan-American Invest., Inc.*, 625 F.2d 605 (5th Cir. Ala.1980); *Liles v. Flatley*, 643 So.2d 947 (Ala.1994).

#### **§ 34-27-31. Recovery Fund created; fees paid to fund; injured party's recovery from fund; procedures, appeals, etc.; licensee to report any legal action taken against him.**

[Historical Notes](#)   [References](#)   [Annotations](#)

(a) The commission shall establish and maintain a Recovery Fund from which an aggrieved party may recover actual or compensatory damages, not including interest and court costs, sustained only within the State of Alabama as a result of conduct of a broker or salesperson in violation of Article 1 or 2 of this chapter or the rules and regulations of the commission.

(b) Notwithstanding any other provision to the contrary, payments from the Recovery Fund are subject to the following conditions and limitations:

(1) The fund shall not be obligated for the acts or omissions of a broker or salesperson while acting on his or her own behalf or on behalf of his or her child, spouse, or parent regarding property in which he or she or his or her spouse, child, or parent has, or is

attempting to acquire, an interest; or for the acts or omissions of an inactive licensee; or for the acts or omissions of a corporation, branch office, or partnership except through its licensed salespersons and brokers as individuals. The fund shall not be obligated for any judgment or settlement resulting from an act or omission of a broker or salesperson committed in conjunction with the marketing or development of a time-sharing project.

(2) Payments for claims based on judgments or settlements against any one person shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

(3) Payments for claims arising out of the same transaction shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate, regardless of the number of claimants.

(4) The fund shall not be liable for payments to a licensee or bonding company unless the licensee or bonding company was a principal party to a real estate transaction on which the judgment was based.

(c)(1) When any person makes application for an original license as a broker or salesperson, he or she shall pay, in addition to all other fees, a fee of thirty dollars (\$30) for deposit in the Recovery Fund. In the event the commission does not issue the license, this fee shall be returned to the applicant.

(2) Any salesperson licensee who has paid the additional fee and who has attained a broker license and has paid the additional broker fee shall be refunded, upon request, one of the additional fees and no other salesperson licensee shall be required to pay an additional fee upon attaining broker status.

(3) Payments made to the Recovery Fund in lieu of bond by a licensee shall be paid only one time when he or she is originally licensed by the commission.

(d) When the balance remaining in the Recovery Fund is less than five hundred thousand dollars (\$500,000), each broker and salesperson shall on order of the commission pay a fee of thirty dollars (\$30) per license for deposit in the Recovery Fund. A licensee on inactive status shall not be required to contribute to the fund at that time. A fee of thirty dollars (\$30) shall be paid at the time a license is activated.

(e)(1) When an aggrieved person commences an action for a judgment which may result in collection from the Recovery Fund, the aggrieved person shall notify the commission in writing, by certified mail, return receipt requested, to this effect at the time of the commencement of the action.

(2) When the commission receives the notice described in subdivision (e)(1), it may enter an appearance, file pleadings and motions, appear at court hearings, defend the action, or take whatever other action it deems appropriate either on the behalf and in the name of the defendant, or in its own name. The commission may also take any appropriate method of review either on behalf and in the name of the defendant, or in its own name. The commission may settle or compromise the claim. Any expenses incurred by the commission in defending, satisfying, or settling any claim shall be paid from the Recovery Fund.

(3) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a broker or salesperson on the grounds described in subsection (a) above, which occurred on or after October 1, 1979, the aggrieved person may, on the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, on 10 days' written notice to the commission, may apply to the court for an order directing payment out of the Recovery Fund of the amount unpaid on the judgment.

(4) The court shall proceed on the application immediately and, on hearing, the aggrieved



person shall be required to show each of the following:

- a. He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent.
- b. He or she has obtained a judgment, as described in subdivision (e)(3), stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in the action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.

c. The following items, if recovered by him or her, have been applied to the actual compensatory damages awarded by the court:

1. Any amount recovered from the judgment debtor.
2. Any amount recovered from bonding companies.
3. Any amount recovered in out-of-court settlements.

(5) The court shall order that the Recovery Fund pay whatever sum it finds due under this section.

(6) Should the commission pay from the Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the commission. The commission may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent a year, the amount paid from the Recovery Fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

(7) If the balance in the Recovery Fund is insufficient to satisfy a duly authorized claim or portion of a claim, the commission shall, when sufficient money has been deposited in the Recovery Fund, satisfy the unpaid claims or portions, plus interest at the rate of 12 percent a year in the order that the claims were originally filed.

(f) The sums received by the commission pursuant to this section shall be deposited into the State Treasury and held in a special fund to be known as the Real Estate Recovery Fund, and shall be held by the commission in trust for carrying out the purposes of the Recovery Fund. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments of the Recovery Fund shall be deposited in the Real Estate Commission Revenue Fund with one-half being transmitted to the University of Alabama Real Estate Research and Education Center.

(g) The commission may transfer funds one time only from the Real Estate Recovery Fund to the University of Alabama Real Estate Research and Education Center. The amount of the transfer may not reduce the Real Estate Recovery Fund below six hundred thousand dollars (\$600,000).

(h) When, on order of the court, the commission has paid from the Recovery Fund any sum, the commission shall be subrogated to all the rights of the judgment creditor, and all his or her right, title, and interest in the judgment, to the extent of the amount paid from the Recovery Fund, shall be assigned to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

(i) The failure of an aggrieved person to strictly comply with all of the provisions of this section shall constitute a waiver of any rights under this section.

(j) Each licensee shall notify the commission within 10 days after notice to him or her of the institution of any criminal prosecution against him or her, or of a civil summons and complaint

against him or her, if the subject matter of the civil complaint involves a real estate transaction or involves the goodwill of an existing real estate business. The notification shall be in writing by certified mail and shall include a copy of the summons and complaint. If a criminal charge is made, it shall include the specific charge made against the licensee together with a copy of any indictment or information alleging the charges.

(k) Each licensee shall notify the commission in writing by certified mail within 10 days after he or she receives notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a real estate transaction or the goodwill of a real estate business has resulted in a judgment or been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee notice.

(Acts 1951, No. 422, p. 745, § 5; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 5; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1995 amendment**, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, in the last sentence of subsection (f), substituted "Real Estate Commission Revenue Fund" for "commission fund," substituted "transmitted" for "placed in a separate fund for transmittal," deleted "Chair for" preceding "Real Estate," and substituted "Research and Education Center" for "for research and development"; added subsection (g); and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.20, Real Estate Board; Licensure: Recovery Fund Fee Exemption.

### RESEARCH REFERENCES

#### **Annotations:**

Transactions within public security or guaranty fund designed to compensate those suffering damage or loss on account of real-estate brokers' defalcations. 38 A.L.R.4th 792.

Real-estate brokers: Statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers. 62 A.L.R.4th 1044.

#### **American Digest System:**

Brokers 4.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-12.

## ANNOTATIONS

### 1. Liability of real estate recovery fund

Legislature did not intend the real estate recovery fund to provide redress for the wrongdoing of licensees while not involved in a real estate transaction. *Ex parte Alabama Real Estate Com'n*, 447 So.2d 740 (Ala.1984).

By limiting license revocation to wrongful conduct occurring when the licensee performs acts subject to the real estate license law, the legislature has limited the real estate recovery fund by tying it to the violations of the chapter. *Ex parte Alabama Real Estate Com'n*, 447 So.2d 740 (Ala.1984).

### 2. Liability of broker

Real estate brokers and salespersons should not be exempt from responsibility for statements and representations they make to induce a purchaser to act, when, under the circumstances, these amount to fraud in a legal sense. Real estate brokers and salespersons are subject to professional standards as established by this section, and should use extreme caution and care in making statements and representations to their clients. *Earle, McMillan & Niemeyer, Inc. v. Dekle*, 418 So.2d 97 (Ala.1982).

Subsection (b) of this section requires broker to accept responsibility for the actions of all salespersons licensed under him or her. Such responsibility includes supervision of all transactions of the salesman and liability for any damages caused to a party injured by the acts of the salesman in violation of the statutes. *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

**Cited** in *General Mut. Ins. Co. v. Pledger*, 280 Ala. 400, 194 So.2d 557 (1967); *Lumbermens Mut. Casualty Co. v. Louisville Title Ins. Co.*, 414 F.2d 415 (5th Cir. Ala.1969); *Labovitz v. Gulf American Fire & Casualty Co.*, 47 Ala.App. 412, 255 So.2d 592 (Civ. App. 1971); *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

### § 34-27-32. Requirements for license; application; issuance to company; termination of license issued to company; fees for criminal record search and copy of record.

[Historical Notes](#)   [References](#)   [Annotations](#)

(a) A license for a broker or a salesperson shall be registered to a specific real estate office and shall be issued only to, and held only by, a person who meets all of the following requirements:

(1) Is trustworthy and competent to transact the business of a broker or salesperson in a manner that safeguards the interest of the public.

(2) Is a person whose application or license has not been rejected or revoked in any state within two years prior to date of application on any grounds other than failure to pass a written examination. Any applicant whose license has been revoked shall meet all the requirements imposed on an original applicant for a license and shall not be relicensed without the approval of the commissioners.

(3) Is at least 19 years old.

(4) Is a citizen of the United States or is an alien with permanent resident status.

(5) Is a person who, if a nonresident, agrees to sign an affidavit stating the following and

in the following form:

"I, as a nonresident applicant for a real estate license and as a licensee, agree that the Alabama Real Estate Commission shall have jurisdiction over me in any and all of my real estate related activities the same as if I were an Alabama resident licensee. I agree to be subject to investigations and disciplinary actions the same as Alabama resident licensees. Further, I agree that civil actions may be commenced against me in any court of competent jurisdiction in any county of the State of Alabama.

"I hereby appoint the Executive Director or the Assistant Executive Director of the Alabama Real Estate Commission as my agent upon whom all disciplinary, judicial, or other process or legal notices may be served. I agree that any service upon my agent shall be the same as service upon me and that certified copies of this appointment shall be deemed sufficient evidence and shall be admitted into evidence with the same force and effect as the original might be admitted. I agree that any lawful process against me which is served upon my agent shall be of the same legal force and validity as if personally served upon me and that this appointment shall continue in effect for as long as I have any liability remaining in the State of Alabama. I understand that my agent shall, within a reasonable time after service upon him or her, mail a copy of the service by certified mail, return receipt requested, to me at my last known business address.

"I agree that I am bound by all the provisions of the Alabama Real Estate License Law the same as if I were a resident of the State of Alabama.

\_\_\_\_\_  
Legal signature of applicant"

The commission may reject the application of any person who has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude.

(b)(1) A person who holds a current real estate salesperson license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal salesperson license on a form prescribed by the commission. A person who holds a current broker license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal broker license on a form prescribed by the commission. The applicant shall submit proof that he or she has a current real estate license in another state as evidenced by a certificate of licensure, together with any other information required by the commission. Applicants for a reciprocal license shall not be subject to the examination or temporary license requirements of Section 34-27-33. A person who holds a reciprocal license shall show proof of completion of continuing education either by meeting the requirements of Section 34-27-35 or by showing proof that his or her other state license remains active in that state. The fees for issuance and renewal of a reciprocal license shall be the same as those for original licenses pursuant to Section 34-27-35. The Recovery Fund fee for issuance of a reciprocal license shall be the same as for an original license pursuant to Section 34-27-31, and errors and omissions insurance requirements shall be the same as provided in Section 34-27-35.1.

(2) A person who holds a current Alabama license who moves to and becomes a resident of the state shall within 10 days submit to the commission notice of change of address and all other license status changes.

(c) A person who does not hold a current real estate broker license in another state desiring to be a real estate broker in this state shall apply for a broker's license on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along

with the application, he or she shall submit all of the following:

(1) Proof that he or she has had an active real estate salesperson's license in any state for at least 24 months of the 36 month period immediately preceding the date of application.

(2) Proof that he or she is a high school graduate or the equivalent.

(3) Proof that he or she has completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.

(4) Any other information requested by the commission.

(d) A person who does not hold a current real estate salesperson license in another state desiring to be a real estate salesperson in this state shall apply for a salesperson's license with the commission on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application he or she shall furnish all of the following:

(1) Proof that he or she is a high school graduate or the equivalent.

(2) Proof that he or she has successfully completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.

(3) Any other information required by the commission.

(e) An application for a company license for a corporation, partnership, or branch office shall be made by a qualifying broker on a form prescribed by the commission. The qualifying broker shall be an officer, partner, or employee of the company.

(f) An applicant for a company or broker license shall maintain a place of business.

(g) If the applicant for a company or broker license maintains more than one place of business in the state, he or she shall have a company license for each separate location or branch office. Every application shall state the location of the branch office and the name of its qualifying broker. Each branch office shall be under the direction and supervision of a qualifying broker licensed at that address. No person may serve as qualifying broker at more than one location. The qualifying broker for the branch office and the qualifying broker for the corporation, partnership, or sole proprietorship shall share equal responsibility for the real estate activities of all licensees assigned to the branch office.

(h) No person shall be a qualifying broker for more than one company or for a company and on his or her own behalf unless:

(1) All companies for which he or she is and proposes to be the qualifying broker consent in writing.

(2) He or she files a copy of the written consent with the commission.

(3) He or she will be doing business from the same location.

A person licensed under a qualifying broker may be engaged by one or more companies with the same qualifying broker.

(i) A company license shall become invalid on the death or disability of a qualifying broker. Within 30 days after the death or disability, the corporation, or the remaining partners or the successor partnership, if any, may designate another of its officers, members, or salespersons to apply for a license as temporary qualifying broker. The person designated as temporary qualifying broker shall either be a broker or have been a salesperson for at least one year prior to filing the application. If the application is granted, the company may operate under that broker for no more than six months after the death or disability of its former qualifying broker. Unless the company designates a fully licensed broker as the qualifying broker within the six months, the company license shall be classified inactive by the commission.

(j) The commission may charge any applicant a fee for a criminal record search of the

applicant in the same amount as is charged the commission by the Department of Public Safety or other agency for the search.

(k) The commission may charge a fee of ten dollars (\$10) for furnishing any person a copy of a license, certificate or other official record of the commissioner.

(Acts 1951, No. 422, p. 745, § 6; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 6; Acts 1971, 3rd Ex. Sess., p. 4599, § 1; Acts 1975, No. 568, p. 1306, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, redesignated subsections (b) through (j) as subsections (c) through (k), respectively, and added a new subsection (b); in subsection (c), as so redesignated, in the introductory matter inserted "who does not hold a current real estate broker license in another state", and in subdivision (3) substituted "of 60 clock hours" for "of eight weeks in length, shall meet at least once a week, and shall contain a minimum of 60 classroom hours"; in subsection (d), as so redesignated, in the introductory matter inserted "who does not hold a current real estate salesperson license in another state", and in subdivision (2) substituted "of 60 clock hours" for "of eight weeks in length, shall meet at least once a week, and shall contain a minimum of 45 classroom hours"; in subsection (f), as so redesignated, deleted "in the State of Alabama" following "business"; and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.01, 790-X-2-.02, 790-X-2-.04, 790-X-2-.06, 790-X-2-.23, Real Estate Board; Licensure.  
19 Ala. Admin. Code 790-X-3-.01, Real Estate Board; Disciplinary Actions; Change Of Address.

### RESEARCH REFERENCES

#### **Am Jur:**

12 Am Jur 2d, Brokers § 8 et seq.

#### **Annotations:**

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 A.L.R.3d 523.

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### 1. Generally

Former subsection (d) of this section (now subsection (c)) provides that no license may be granted a salesman unless he lists a licensed broker for whom he will work and broker, by sworn statement, vouches for his reputation and honesty. *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

### 2. Constitutionality

Sections 34-27-33(b), 34-27-34(a)(1), and subsections (b), (c) and (e) of this section are unconstitutional in that they violate the Commerce Clause of U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a)(1) violate the Commerce Clause of U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The 15 semester credit hour requirement, in conjunction with the experience and education-in-Alabama limitation, unduly burdens interstate commerce in violation of the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

**Cited** in *Holloway v. Jackson*, 412 So.2d 774 (Ala.1982); *Georgia Asso. of Realtors v. Alabama Real Estate Com.*, 678 F.Supp. 854 (M.D. Ala.1987).

### **§ 34-27-33. Written examination; conditions for licensure; issuance of licenses.**

[Historical Notes](#)   [References](#)   [Annotations](#)

(a)(1) In addition to other requirements of this chapter, every applicant for a broker's or salesperson's license shall submit to a reasonable written examination. The commission shall conduct examinations at places and times it prescribes. The commission may contract with an independent testing agency to prepare, grade, or conduct the examination.

(2) The fee shall be seventy-five dollars (\$75) for each examination taken by the applicant. No refund shall be made if an applicant fails the examination. The examination fee shall be paid by certified check, cashier's check, or money order. If an applicant is scheduled and issued a written permit for an examination and fails to appear, one-half of the examination fee shall be forfeited. The provisions of this subdivision shall continue until

October 1, 2001, at which time they shall terminate.

(3) Effective October 1, 2001, and thereafter, the fee for each examination and the provisions for payment and forfeiture shall be as specified in the contract with the independent testing agency.

(b) Within 90 days after passing the examination, the applicant shall secure a qualifying broker and meet all requirements of this chapter and the board shall issue an active license or classify the license as inactive. In order to obtain an active license, the applicant's qualifying broker shall sign and submit to the commission a sworn statement that the applicant is in his or her opinion honest, trustworthy, and of good reputation and that the broker accepts responsibility for the actions of the salesperson as set out in Section 34-27-31. The applicant's qualifying broker shall be licensed in Alabama.

(c)(1) On passing the examination and complying with all other conditions for licensure, a temporary license certificate shall be issued to the applicant. The applicant is not licensed until he or she or his or her qualifying broker actually receives the temporary license certificate. A temporary license shall be valid only for a period of one year following the first day of the month after its issuance.

(2) The holder of a temporary license shall not be issued an original license until he or she has satisfactorily completed a 30-hour post-license course prescribed by the commission. The holder of a temporary license must complete the course within 6 months of issuance of his or her temporary license and have his or her original license issued, otherwise his or her temporary license certificate shall automatically be placed on inactive status by the commission. During the remaining 6 months his or her temporary license is valid, the holder of a temporary license may complete the course and have his or her original license issued. If the holder of a temporary license does not complete the course and have his or her original license issued within one year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse. A temporary license is not subject to renewal procedures in this chapter and may not be renewed.

(3) In order to have a temporary license issued to active status, the applicant shall pay the Recovery Fund fee specified in this chapter. The holder of a temporary license shall, upon satisfactory completion of the course, pay the original license fee specified in this chapter to have his or her original license issued. An applicant for an original license who has paid the Recovery Fund fee specified in this chapter shall not be required to pay another Recovery Fund fee in order to have his or her original license issued.

(4) The holder of an original license who has satisfactorily completed the post license course and whose original license has been issued, shall not be subject to the continuing education requirements in this chapter for the first renewal of his or her original license.

(d) This section shall become effective for licenses issued beginning October 1, 1993.

(Acts 1951, No. 422, p. 745, § 8; Acts 1963, No. 290, p. 734, § 8; Acts 1971, No. 2485, p. 3966, § 8; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Act 2001-310, p. 391, § 1.)

## **HISTORICAL NOTES**

### **HISTORY**



### **Amendment notes:**

**The 2001 amendment**, effective April 25, 2001, in subsection (a) designated subdivisions (1) and (2), added subdivision (3), in subdivision (2) substituted "seventy-five dollars (\$75)" for "\$75.00", and added the final sentence; an in subsection (c) deleted the third sentence.

### **Code Commissioner's Notes**

In 2001, the Code Commissioner, in the first sentence of subdivision (3) of subsection (c) before "temporary license," replaced "his" with "a" for grammatical purposes and designated the last sentence of this section as subsection (d).

## **REFERENCES**

### **ADMINISTRATIVE CODE**

19 Ala. Admin. Code 790-X-2-.02, 790-X-2-.03, Real Estate Board; Licensure.

### **RESEARCH REFERENCES**

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## **ANNOTATIONS**

### **1. Constitutionality**

Sections 34-27-32(b), (c) and (e), subsection (b) of this section and 34-27-34(a)(1) are unconstitutional in that they violate the commerce clause of the U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a)(1) violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

**Cited** in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957).

**§ 34-27-34. Who may serve as qualifying broker; responsibility of qualifying broker; change of broker; termination of qualifying broker's status.** [Historical Notes](#) [References](#)  
[Annotations](#)

(a)(1) A broker may serve as qualifying broker for a salesperson or associate broker only if

licensed in Alabama, his or her principal business is that of a real estate broker, and he or she shall be in a position to actually supervise the real estate activities of the associate broker or salesperson on a full-time basis.

(2) A salesperson or associate broker shall not perform acts for which a license is required unless licensed under a qualifying broker. A qualifying broker shall be held responsible to the commission and to the public for all acts governed by this chapter of each salesperson and associate broker licensed under him or her and of each company for which he or she is the qualifying broker. It shall be the duty of the qualifying broker to see that all transactions of every licensee engaged by him or her or any company for which he or she is the qualifying broker comply with this chapter. Additionally, the qualifying broker shall be responsible to an injured party for the damage caused by any violation of this chapter by any licensee engaged by the qualifying broker. This subsection does not relieve a licensee from liability that he or she would otherwise have.

(3) The qualifying brokers' supervision responsibilities, as prescribed herein, over the real estate activities of associate brokers and salespersons licensed under him or her are not intended to and should not be construed as creating an employer-employee relationship contrary to any expressed intent of the qualifying broker and licensee to the contrary.

(b) Any salesperson or associate broker who desires to change his or her qualifying broker shall give notice in writing to the commission, and shall send a copy of the notice to his or her qualifying broker. The new qualifying broker shall file with the commission a request for the transfer and a statement assuming liability for the licensee. On payment of a fee of twenty-five dollars (\$25), a new license certificate shall be issued to the salesperson or associate broker for the unexpired term of the original license. A fee of twenty-five dollars (\$25) shall also be charged for any of the following license changes:

(1) Change of qualifying broker by a company or sole proprietorship. The fee is paid for the license or licenses on which the current and new qualifying brokers' names appear. In cases where a company has a branch office or offices and the main office qualifying broker is changed, the fee is paid for each branch office license and for the license of each branch qualifying broker.

(2) Change of personal name of a qualifying broker. The fee is paid for the license or licenses on which the current qualifying broker's name appears.

(3) Change of personal name of a salesperson or associate broker. The fee is paid for the license on which the name appears.

(4) Change of business location. The fee is paid for the license or licenses on which the address appears.

(5) Change of business name. The fee is paid for the license or licenses on which the name appears.

(6) Change of status from inactive to active. The fee is paid for each license being changed from inactive to active status. No fee is charged for the change from active to inactive status.

(c) A person who wishes to terminate his or her status as qualifying broker for a licensee may do so by notifying the licensee and the commission in writing and sending the licensee's license certificate to the commission or verifying in writing to the commission that the certificate has been lost or destroyed.

(d) A person who wishes to terminate his or her status as a qualifying broker for a company may do so by submitting written notice to the company or qualifying broker of the parent

company and the commission.

(e) A salesperson or associate broker shall not perform any act for which a license is required after his or her association with his or her qualifying broker has been terminated, or if he or she changes qualifying brokers, until a new active license has been issued by the commission.

(Acts 1951, No. 422, p. 745, § 9; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 9; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, in subsection (b), in the first sentence substituted "his or her" for "his", and added the last sentence including subdivisions (1) through (6); and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.14, 790-X-2-.21, Real Estate Board; Licensure.

### RESEARCH REFERENCES

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### **1. Generally**

This chapter requires that a real estate salesperson be licensed under a qualifying broker. A qualifying broker is held responsible to the commission and to the public for the acts of each salesperson licensed under her. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).

Subsection (d) of this section provides that it shall be unlawful for a salesman to act as a salesman after his employment has been terminated by the broker under whom he was licensed. *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

### **2. Constitutionality**

Sections 34-27-32(b), (c) and (e), 34-27-33(b) and subsection (a)(1) of this section are unconstitutional in that they violate the U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a) (1) violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The 15 semester credit hour requirement, in conjunction with the experience and education-in-Alabama limitation, unduly burdens interstate commerce in violation of the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

#### **§ 34-27-35. License certificates generally.** [Historical Notes](#) [References](#)

(a) The commission shall prescribe the form and content of license certificates issued. Each qualifying broker's license certificate shall show the name and business address of the broker. The license certificate of each active salesperson or associate broker shall show his or her name and address. The license certificate of each active salesperson or associate broker shall be delivered or mailed to his or her qualifying broker. Each license certificate shall be kept by the qualifying broker and shall be publicly displayed at the address which appears on the license certificate.

(b) The commission may establish a one-year or multi-year license period.

(c)(1) The fee for a temporary license shall be one hundred fifty dollars (\$150). The original fee for a broker's license shall be one hundred fifty dollars (\$150) and, beginning with the license period effective October 1, 2002, the renewal fee for a broker's license shall be seventy-five dollars (\$75) per year for each year of the license period. The original fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year of the license period. The original fee for each company license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be sixty-five dollars (\$65) per year for each year of the license period.

(2) Beginning with the license period effective October 1, 2004, the renewal fee for a broker's license shall be ninety-five dollars (\$95) per year for each year of the license period. The original fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year of the license period. The original fee for each company license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be eighty-five dollars (\$85) per year for each year of the license period.

(d) The renewal research and education fee shall be two dollars and fifty cents (\$2.50) per year for each year of the license period, and shall be paid at the time of license renewal by all brokers and salespersons in addition to the license renewal fees set out in this section. Collection of this fee shall begin and shall apply to all broker and salesperson renewals on and after August 1, 1996, except that brokers who hold more than one broker's license shall pay the fee for only one license at each renewal.

(e) The original research and education fee shall be thirty dollars (\$30) and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of an original broker's license, and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of a temporary salesperson's license. This is in addition to the original license fees set out in this section. This thirty dollar (\$30) original research and education fee is a one-time fee which no person shall be required to pay more than once.

(f) The license of a salesperson who is subsequently issued a broker's license automatically terminates upon the issuance of his or her broker's license certificate. The salesperson's license certificate shall be returned to the commission in order for a broker's license to be issued. No refund shall be made of any fee or recovery fund deposit pertaining to the salesperson's, broker's, or company's license.

(g) The commission shall prescribe a license renewal form, which shall accompany renewal fees, proof of errors and omissions insurance coverage, if applicable, and proof of completion of not less than 15 clock hours of approved continuing education course work, if applicable, and all shall be filed on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis for the following license period. If any of the foregoing are filed during the period from September 1 through September 30 of the final year of a license period, the one hundred fifty dollar (\$150) penalty set out below shall be paid in addition to the renewal fees. Failure to meet this September 30 deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in these cases. Licensees filing during the period from September 1 of the final year of a license period through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of one hundred fifty dollars (\$150).

(h) The renewal form shall be mailed by the commission to the licensee's place of business, if an active licensee, or to his or her residence if an inactive licensee, prior to August 1 of the final year of each license period. Each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change.

(i) Every license shall expire at midnight on September 30 of the final year of each license period. An expired license may be renewed during the 12-month period following the license period for which the license was current. A licensee who fails to renew before the end of the 12-month period following the license period for which the license was issued has a lapsed license, and shall be subject to all requirements applicable to persons who have never been licensed, however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties. An inactive license must be renewed in the same manner as an active license.

(j)(1) Each applicant for renewal of an active salesperson or broker license issued by the commission shall, on or before August 31 of the final year of each license period, submit proof of completion of not less than 15 clock hours of approved continuing education course

work to the commission, in addition to any other requirements for renewal. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in this case. The commission shall not approve any continuing education course work to be taught in any part during the month of September of the final year of a license period. The commission shall not accept any continuing education course work taken in any part during the month of September of the final year of a license period. Proof of attendance at the course work, whether or not the applicant attained a passing grade in the course, shall be sufficient to satisfy requirements for renewal. The 15 clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess of 15 shall not be cumulated or credited for the purpose of subsequent license renewals. The commission shall develop standards for approval of courses, and shall require certification of the course work of the applicant.

Time served as a member of the state Legislature during each license renewal period shall be deemed the equivalent of the 15 hours course work and shall satisfy the requirements of this subsection.

(2) This section shall apply to renewals of licenses which expire after September 30, 1986. An applicant for first renewal who has been licensed for not more than one year shall not be required to comply with this section for the first renewal of the applicant's license. Any licensee reaching the age of 65 on or before September 30, 2000, and having been licensed 10 years prior to that date shall be exempt from this section.

(3) Continuing education shall not result in a passing or failing grade.

(k) A licensee may request that the commission issue his or her license to inactive status. Inactive licenses shall be held at the commission office until activated. No act for which a license is required shall be performed under an inactive license.

(Acts 1951, No. 422, p. 745, § 10; Acts 1963, No. 290, p. 734, § 8; Acts 1967, No. 386, p. 973, § 1; Acts 1971, No. 2485, p. 3966, § 10; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 292, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-298, p. 427, § 1; Acts 1986, No. 86-418, p. 624, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 4; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1; Acts 1996, No. 96-791, p. 1471, § 1; Act 99-518, p. 1140, § 1; Act 2001-310, p. 391, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1995 amendment**, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, added subsections (d) and (e), and made nonsubstantive changes.

**The 1996 amendment**, effective May 29, 1996, in subsection (g), in the first sentence inserted ", proof of errors and omissions insurance coverage, if applicable, and proof of completion of not less than 12 clock hours of approved continuing education course work, if applicable," and inserted "all shall", inserted the second through fourth sentences, in the fifth

sentence substituted "through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of sixty-five dollars (\$65)" for "through October 31 of the initial year of the following license period, shall pay a penalty of fifteen dollars (\$15) in addition to the license fee", and deleted the former sixth sentence which read "Any licensee renewing during the period from November 1 through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of sixty-five dollars (\$65)."; in subsection (i), in the third sentence inserted "has a lapsed license, and" and inserted ", however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties"; in subsection (j), in subdivision (1), in the first sentence substituted "an active" for "a", substituted "August 31 of the final year of each license period" for "the expiration date of his or her license", and inserted "continuing education", and added the second through fifth sentences, and in subdivision (2), in the third sentence substituted "upon reaching the age of 65 and having been licensed 10 years prior to that date" for "who is 65 years of age or greater"; and made nonsubstantive changes.

**The 1999 amendment**, effective October 1, 2000, in subsections (g) and (j) substituted "15" for "12" throughout; and in subsection (j), in subdivision (2) deleted "upon" following "licensee" and inserted "on or before September 30, 2000,".

**The 2001 amendment**, effective April 25, 2001, in subsection (c) designated subdivision (1), added subdivision (2), in subdivision (1) added the first sentence, substituted "one hundred fifty dollars (\$150) and beginning with the license period effective October 1, 2002," for "forty-five dollars (\$45) per year for each year or portion of a year remaining in the respective license period," substituted "seventy-five dollars (\$75)" for "forty-five dollars (\$45)", and substituted "sixty-five dollars (\$65)" for "thirty-five dollars (\$35)" in four places; in subsection (e) deleted ", and is in addition to the temporary license fee set out in Section 34-27-33" following "section"; in subsection (f) deleted the third sentence, substituted "penalty" preceding "fee", and inserted ", broker's, or company's"; in subsection (g) added the second sentence, inserted "September 30", substituted "may" for "shall not" substituted "filing" for "who renew", and substituted "one hundred fifty dollars (\$150)" for "sixty-five dollars (\$65)"; and in subsection (j) substituted "may" for "shall not".

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.09 through 790-X-1-.14, Real Estate Board; General Provisions.  
 19 Ala. Admin. Code 790-X-2-.13, 790-X-2-.15, 790-X-2-.16, 790-X-2-.19, 790-X-2-.21, 790-X-2-.23, Real Estate Board; Licensure.  
 19 Ala. Admin. Code 790-X-3-.01, Real Estate Board; Disciplinary Actions: Change Of Address.

### RESEARCH REFERENCES

#### **Annotations:**

Validity of statute requiring real estate broker to procure license. 39 A.L.R.2d 606.  
 Necessity for real estate broker's license as affected by fact that sale is of both real and personal property. 82 A.L.R.3d 1139.

#### **American Digest System:**

Brokers 3.

**§ 34-27-35.1. Errors and omissions insurance.** [Historical Notes](#) [References](#)

(a) All real estate licensees, except those whose license is on inactive status with the commission shall, as a condition to holding an active license, carry errors and omissions insurance to cover activities contemplated under this chapter.

(b) The Real Estate Commission shall make the insurance required under this section available to all licensees by contracting with an insurance provider having a current rating in A.M. Best of A minus or better for a group policy, after competitive bidding in accordance with applicable Alabama law, except that no bid shall be accepted by the commission of any insurance provider having a current or former member of the Alabama Real Estate Commission or spouse thereof in the employment of that provider.

(c) Any policy obtained by the commission must be available to all licensees with no right on the part of the insurance provider to cancel.

(d) All licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage so obtained complies with the minimum requirements established by the commission. Those who choose this option shall show compliance by providing a certificate of coverage and filing it with the commission office.

(e) The commission shall determine and set the terms and conditions of coverage mandated under this section, including but not limited to the minimum limits of coverage, the deductible, and exclusions from coverage, and that the total premium shall not exceed two hundred fifty dollars (\$250) per year.

(f) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before his or her license is to be renewed. Proof of coverage shall be furnished to the commission on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in this case.

(g) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the program as prescribed in subsection (e), the requirement of insurance coverage under this section shall be void during the applicable contract period.

(h) The errors and omissions insurance coverage required by this section shall become effective as a condition of license issuing or renewal on October 1, 1993. Failure by any licensee to obtain such coverage shall result in his or her license being issued or renewed on inactive status.

(i) The Alabama Real Estate Commission is hereby authorized to promulgate and implement such administrative rules and regulations in accordance with the state Administrative Procedure Act as shall be necessary, from time to time, to carry out the provisions of this section. (Acts 1992, No. 92-602, p. 1250, §§ 1, 2; Acts 1996, No. 96-791, p. 1471, § 1; Act 99-425, p. 757, § 1; Act 2001-310, p. 391, § 1.)



## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, substituted "his or her" for "his" throughout the section; in subsection (f), inserted the second through fifth sentences; and made nonsubstantive changes.

**The 1999 amendment**, effective September 1, 1999, in subsection (a) substituted "this chapter" for "Chapter 27 of Title 34"; in subsection (b) substituted "A minus" for "A"; in subsection (e) substituted "two hundred fifty dollars (\$250)" for "one hundred dollars (\$100)"; and made nonsubstantive changes.

**The 2001 amendment**, effective April 25, 2001, in subsection (f) substituted "may" for "shall not".

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.02, 790-X-2-.22, Real Estate Board; Licensure.

19 Ala. Admin. Code 790-X-2-.23, Real Estate Commission; Licensure: Errors and Omissions Insurance Coverage for Reciprocal Licensees.

### RESEARCH REFERENCES

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

**§ 34-27-36. Disciplinary action -- Grounds; legal actions to enjoin act and to enforce compliance; notification of complaint and disposition of complaint.** [Historical Notes](#)  
[References](#) [Annotations](#)

(a) The commission or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The commission may issue subpoenas and compel the testimony of witnesses and the production of records and documents during an investigation. If probable cause is found, a formal complaint shall be filed and the commission shall hold a hearing on the formal complaint. The commission shall revoke or suspend the license or impose a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000), or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts:

(1) Procuring or attempting to procure, a license, for himself or herself or another, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license.

(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.

(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or

lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.

(4) Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement.

(5) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salespersons or any medium of advertising or otherwise.

(6) Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed broker or salesperson.

(7) Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom he or she acts.

(8)a. Failing, within a reasonable time, to properly account for or remit money coming into his or her possession which belongs to others, or commingling money belonging to others with his or her own funds.

b. Failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.

c. Failing to keep for at least three years a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information.

(9) Placing a sign on any property offering it for sale, lease, or rent without the consent of the owner.

(10) Failing to voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document with reasonable promptness.

(11) Paying any profit, compensation, commission, or fee to, or dividing any profit, compensation, commission, or fee with, anyone other than a licensee or multiple listing service.

(12) Paying or receiving any rebate from any person in a real estate transaction.

(13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.

(14) If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.

(15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing on the advertising in letters at least as large as the name of the salesperson or associate broker; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing on the advertising in letters at least as large as the name of the salesperson or associate broker.

(16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.

(17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.

(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

(19) Violating or disregarding any provision of this chapter or any rule, regulation, or order of the commission.

(20) If a broker, accepting a "net listing" agreement for sale of real property or any interest therein. A "net listing" is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission.

(21) Misrepresenting or failing to disclose to any lender, guaranteeing agency, or any other interested party, the true terms of a sale of real estate.

(22) Failing to inform the buyer or seller at the time an offer is presented that he or she will be expected to pay certain closing costs and the approximate amount of those costs.

(23)a. Having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.

b. Having a final money judgment rendered against him or her which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.

(24) Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.

(25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.

(26) Conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness.

(27) Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.

(28) Failing or refusing on demand to produce a document, book, or record in his or her possession concerning a real estate transaction conducted by him or her for inspection by the commission or its authorized personnel or representative.

(29) Failing within a reasonable time to provide information requested by the commission during an investigation or after a formal complaint has been filed.

(30) Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into his or her possession.

(31) If a qualifying broker or company, failing to keep in their files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a period of three years.

(b) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of Article 1 or 2 of this chapter or any rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with Articles 1 and 2 of this chapter or any rule or order of the commission. To prevail in an action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation.

(c) The commission shall notify the licensee and qualifying broker in writing regarding the

complaint.

(d) The commission shall notify the complainant, licensee, and qualifying broker in writing regarding the disposition of the complaint.

(Acts 1951, No. 422, p. 745, § 12; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 12; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 29, 1996, added subsections (c) and (d); and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.03 through 790-X-3-.06, 790-X-3-.09, Real Estate Board; Disciplinary Actions.

### RESEARCH REFERENCES

#### **Am Jur:**

12 Am Jur 2d, Brokers § 21 et seq.

#### **Annotations:**

Validity of statute or rule that makes specified conduct ground for cancellation or suspension of license irrespective of licensee's personal fault. 3 A.L.R.2d 107.

Failure to obtain occupational or business license or permit as defense to tort action. 13 A.L.R.2d 157.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor. 17 A.L.R.2d 904.

Suspension or revocation of real estate broker's license on ground of discrimination. 42 A.L.R.3d 1099.

Pardon as restoring license forfeited by conviction. 58 A.L.R.3d 1191.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties. 68 A.L.R.3d 530.

Recovery back of money voluntarily paid to unlicensed person required by law to have occupational or business license or permit to make contract. 74 A.L.R.3d 637.

Revocation or suspension of license of real estate broker or salesman. 22 A.L.R.4th 136.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser. 34 A.L.R.4th 191.

Actionable nature of advertising impugning quality or worth of merchandise or products. 42 A.L.R.4th 318.

Real estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Real-estate brokers: Statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers. 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Grounds for revocation or suspension of license of real-estate broker or salesperson. 7 A.L.R.5th 474.

**American Digest System:**

Brokers 3.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### 1. Generally

Subdivision (a)(10) has no bearing on realtor's right to his commission, but instead addresses the authority of the real estate commission to discipline its licensed brokers. *Gentile v. Century 21, Ray Brannum Agency, Inc.*, 560 So.2d 760 (Ala.Civ.App.1990).

### 2. Collection of fee from client

Where salesperson signed over the commission check to sellers under the direction of the qualifying broker, and then asked for and received \$300.00 from the sellers without making an accounting to the qualifying broker, the Alabama Real Estate Commission finding of guilt was supported by substantial evidence. *Simon v. State of Ala. Real Estate Com'n*, 607 So.2d 1277 (Ala.Civ.App.1992).

The clear meaning of this section is that a real estate salesman may not collect his fee directly from his client. Each sale must be examined and authorized by a qualifying broker. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).

### 3. Sufficiency of evidence

Where salesman was late in returning the \$500 certified check to the potential purchasers when the property became unavailable because he was out of town for an extended period, Alabama Real Estate Commission's finding of guilt was not supported by substantial evidence and was arbitrary. *Simon v. State of Ala. Real Estate Com'n*, 607 So.2d 1277 (Ala.Civ.App.1992).

**Cited** in *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Com.*, 401 So.2d 764 (Ala.1981), concurring op. at 611 So.2d 1021 (Ala.); *Ex parte Alabama Real Estate Com.*, 447 So.2d 740 (Ala.1984).

## § 34-27-37. Disciplinary action -- Procedure in action. [References](#) [Annotations](#)

(a) An action against an accused shall begin by serving the accused either personally or by certified mail with a copy of the formal complaint against him. The accused shall be given at least 15 days' notice of the time, date and place of hearing. If the commission refuses to license an applicant, notice of the refusal shall be given to the applicant, and he may, within 15 days after delivery of the notice, file a request for a hearing. The applicant or accused shall have an

opportunity to be heard in person or by counsel, to offer testimony in his behalf and to examine witnesses. Hearings shall be held in the county in which the applicant resides or in which the accused maintains his principal place of business, unless the applicant or accused agrees to be heard in another county. If the accused does not maintain his place of business in Alabama, then the hearing shall be held in his county of residence. If the accused neither resides or maintains a place of business in Alabama, the hearing shall be held in Montgomery County. At hearings, all witnesses shall be sworn by a member of the commission, the executive director, the assistant executive director, or a hearing officer. The commission shall render a written order within 30 days from the final date of hearing. If the matter alleged in the complaint is the subject of an action pending in any court, the commission may withhold rendering or implementing its order pending disposition of the court action.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records and documents, either at the instance of the commission or the accused. The process issued by the commission shall extend to all parts of the state, and such process shall be served by a person designated by the commission or by mailing the process by certified mail. A subpoenaed witness who appears in a proceeding before the commission shall receive fees, mileage and expense allowances as authorized by the commission. All fees, mileage and expense payments shall be taxed against the party or parties subpoenaing the witness.

(c) If in a proceeding before the commission, a subpoenaed witness fails or refuses to attend or refuses to testify or fails or refuses to produce subpoenaed documents or records, his attendance and testimony or the production of the documents and records shall be enforced by any circuit court of this state, in the same manner as the attendance and testimony of witnesses is enforced in civil cases.

(d) An accused, applicant or other party to a case heard by the commission who is aggrieved by a final decision, may file an application for rehearing specifying grounds for relief within 30 days of receiving notice of the decision.

An application for rehearing does not modify the effective date of the decision and is appropriate only if the final decision is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the commission;
- (3) In violation of a commission rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within 30 days from the filing of the application for rehearing the commission shall set a hearing date on the application, or shall enter an order without a hearing, or shall grant or deny the application. If the applicant is granted a rehearing, the commission will schedule a rehearing as soon as practicable. If the commission does not enter an order within 30 days from the filing of the application for rehearing, the application shall be deemed to be denied.

(Acts 1951, No. 422, p. 745, § 13; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 13; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3.)

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.07, 790-X-3-.10, 790-X-3-.11, Real Estate Board; Disciplinary Actions.

### RESEARCH REFERENCES

#### **Annotations:**

Administrative decision on finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 552.

Hearing and decision by different officers; change of personnel. 18 A.L.R.2d 606.

Administrative decision based upon evidence taken by examiner or other delegate. 18 A.L.R.2d 616.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction. 27 A.L.R.2d 1208.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required. 30 A.L.R.2d 1006.

Counsel's absence because of attendance on legislature as ground for continuance in case before quasi-judicial officer or board. 49 A.L.R.2d 1073.

Reopening decision: Power of administrative agency to reopen and reconsider final decision as affected by lack of specific statutory authority. 73 A.L.R.2d 939.

Applicability of stare decisis doctrine to decisions of administrative agencies. 79 A.L.R.2d 1126.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding. 97 A.L.R.2d 1210.

Assistance of counsel: Right to assistance by counsel in administrative proceedings. 33 A.L.R.3d 229.

Hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

#### **American Digest System:**

Brokers 3.

#### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### 1. Generally

Alabama Real Estate Commission is quasi-judicial tribunal, in practice employing cross-examination. *Wellden v. Roberts*, 37 Ala.App. 1, 67 So.2d 69 (Ala.App.1951), affirmed 259 Ala. 517, 67 So.2d 75.

#### **§ 34-27-38. Disciplinary action -- Appeals.** [References](#) [Annotations](#)

(a) Findings of the commission are final unless within 30 days after the date of the commission's final order, the applicant or accused files a notice of appeal in the Circuit Court of Montgomery County, or of the county of his residence, if an Alabama resident; or, if a corporation registered in Alabama, in the circuit court of the county of registration or the county in which the corporation has its principal place of business in Alabama. A party appealing a decision shall post a \$200.00 appeal bond with the clerk of the circuit court. The circuit clerk shall notify the commission of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the commission may be stayed by the court pending such appeal.

(c) The commission shall within 30 days of service of the notice of appeal, or within such additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the commission by the appealing party within 30 days after the notice of appeal is filed. Thereafter the action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. The commission's decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the commission decision or remand the case to the commission for further proceedings.

If the commission decision is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the commission is not affirmed, the court shall tax the costs of appeal against the commission.

(Acts 1951, No. 422, p. 745, § 14; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 14; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

#### **Annotations:**

Effect of court review on administrative decision. 79 A.L.R.2d 1126.

#### **American Digest System:**

Brokers 3.



**Corpus Juris Secundum:**  
C.J.S. Brokers §§ 14-24.

## ANNOTATIONS

### 1. Delay in posting bond

Failure to file bond would have been ground for dismissal of real estate broker's appeal from finding of real estate commission, which revoked real estate license, but court erred in dismissing appeal as untimely on the ground that broker who had filed notice of appeal within 30 days, had not tendered his surety bond until the thirty-first day after being informed of commission's decision since posting bond is merely procedural; the appeal being perfected and jurisdiction of the circuit court attaching upon the filing of a notice of appeal. *Mallory v. Alabama Real Estate Commission*, 369 So.2d 23 (Ala.Civ.App.1979).

### 2. Appellate review

This section is silent regarding an appeal to the appellate courts of this state; nevertheless, § 12-22-2 provides that an appeal lies to the state supreme court [now appropriate appellate court] from final judgments of the circuit courts. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

**Cited** in *Ex parte Darnell*, 262 Ala. 71, 76 So.2d 770 (1954); *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So.2d 764 (Ala.,1981).

## ARTICLE 3. VACATION TIME-SHARING PLANS.

### § 34-27-50. Definitions.

meaning respectively ascribed to them by this section:

(1) Accommodations. Any hotel or motel room, condominium, or cooperative unit, cabin, lodge, apartment or any other private or commercial structure designed for occupancy by one or more individuals or any recreational vehicle campsite or campground.

(2) Business entity. Any individual, corporation, firm, association, joint venture, partnership, trust, estate, business trust, syndicate, fiduciary, and any other group or combination which engages in acts or practices in any trade or commerce.

(3) Contract. Any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security or other muniment conferring on the purchaser the rights, benefits and obligations of a vacation time-sharing plan.

(4) Commission. The Alabama Real Estate Commission.

(5) Commissioner. A member of the Alabama Real Estate Commission.

(6) Facilities. Any structure, service or property whether improved or unimproved made available to the purchaser for recreational, social, family or personal use.

(7) Seller. Any owner of a vacation time-sharing plan or any business entity, including but not limited to an agent, dealer, distributor, franchiser, subsidiary, assignee, reseller, broker or any other representative thereof who, for a fee, commission or other valuable consideration, negotiates or attempts to negotiate the listing, sale, auction, purchase,

exchange or lease of any real estate or the improvements thereon or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. Provided however, that the provisions of this article shall not be applicable to:

a. The resale of a vacation time-sharing unit week by the owner of such unit week, when the seller owns no more than four such unit weeks within the respective vacation time-sharing plan. Provided however, that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period.

b. Agencies and instrumentalities of the state or federal government nor to employees of any lender or public officials making appraisals for federal, state or local units of government, nor to anyone making appraisals through such employees for lending or governmental purposes; and provided further, that the sales licensure provisions of this article shall not be applicable to the sale or leasing of real estate by anyone who owns a fee simple interest of at least 10 percent therein, or to the attorney-at-law of such owner acting within the scope of his duties as an attorney-at-law. Ownership of stock in a corporation is not ownership of an interest in real estate owned by the corporation and does not exempt such stockholder from any provision of this article unless the stockholder owns or controls at least 10 percent of the stock of the corporation. This provision exempts owners from only the sales licensure requirements of this article. All other requirements of sellers under this article shall apply to owners of vacation time-sharing plans.

(8) Vacation time-sharing ownership plan. Any arrangement, plan, or similar device, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time-sharing unit, whereby the purchaser receives an undivided fee simple ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

(9) Vacation time-sharing lease plan. Any arrangement, plan, or similar device, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

Such lease plans shall not include an arrangement or agreement whereby a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state accommodations, of companies which operate in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which no interest in real property is transferred.

(10) Vacation time-sharing plan. Either a vacation time-sharing ownership plan or a vacation time-sharing lease plan as defined herein.

(11) Time-sharing unit. The actual accommodations and related facilities which are the subject of the vacation time-sharing ownership plan or lease plan.

(12) Substantially complete. All structural components and mechanical systems of all buildings containing or comprising any time-sharing unit, facilities, or accommodations are finished in accordance with the plans or specifications of the project as evidenced by a

recorded certificate of completion executed by an independent registered surveyor, architect or engineer.

(13) Unit week or interval. A number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time-sharing plans by the sellers.

(14) Receivable. Any note, contract, promise or any other agreement to pay a fixed or determinable amount of money which, for the purposes of this article, shall not be in arrears for more than 90 days.

(15) Escrow agent. A federally insured financial institution doing business in this state or a bonded trust agent bonded in at least the amount of the trust; provided, however, that nothing contained in this article shall operate to prevent investment of funds escrowed pursuant to this article by the bank, trust company or bonded agent and to pay all interest and dividends to the seller of vacation time-sharing plans.

(16) Escrow account. Any funds held or maintained by an escrow agent.

(17) Vacation time-sharing sales license. A license issued by the commission authorizing individuals to act as sellers of vacation time-sharing plans.

(18) Licensee. A person having a vacation time-sharing sales license.

(19) Exchange company. Any person or business entity owning and/or operating an exchange program.

(20) Exchange program. Any arrangement allowing owners to exchange occupancy rights with persons owning other timeshares; provided, however, that an exchange program shall not exist if all of the occupancy rights which may be exchanged are in the same time-share property.

(21) Managing agent. Any person engaged by the owners association to manage the time-share plan and the time-share property.

(22) Qualifying broker. A person who is licensed by the commission as a real estate broker as well as a seller of vacation time-sharing plans and who serves in a supervisory capacity to all other licensees acting in the name of the vacation time-sharing plan which the qualifying broker represents.

(23) Time-sharing project. All the real property contained as part of a vacation time-sharing plan.

(Acts 1983, No. 83-670, p. 1035, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

**§ 34-27-51. Acts constituting violation of article -- Sell, etc.; without license; failure to provide certain documents at time of registration; failure to follow rules of advertising.**

[References](#)   [Annotations](#)

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Sell, lease, encumber or convey in any manner or to solicit or advertise such transactions unless the seller has been duly licensed under the provisions of Section 34-27-66 and unless the vacation time-sharing plan and the units thereby affected have first been registered with the commission. Provided, however, that the registration requirements of this article shall not apply to nor restrict the listing and resale of any vacation time-sharing plan when:

a. The vacation time-sharing plan to be resold is within an existing time-sharing

facility currently registered with the commission pursuant to the requirements of this article; and

b. The vacation time-sharing plan to be resold is subject to the identical rules, regulations, conditions or limitations on the use of the accommodations or facilities which affect all other vacation time-sharing plans within that time-sharing facility.

(2) Fail to provide, at the time of registration, to the commission the following materials, or fail to provide any amendments or changes therein made while sales continue:

a. A copy of the contract by which the rights and obligations of the parties are established.

b. Copies of promotional brochures, pamphlets, advertisements or other material disseminated to the public in connection with the sale of the vacation time-sharing plan and verbatim scripts of all radio and television advertising in connection therewith.

c. A statement of the name and type of business entity through which the business of selling vacation time-sharing plans is carried out, including a list of the names and addresses of all of its directors, principal officers, and/or partners, as well as the names and addresses of any sales personnel soliciting in or from the State of Alabama, and the name and address of the business agent for service of process within the State of Alabama.

d. Copies of all rules, regulations, conditions or limitations on use of the accommodations or facilities available pursuant to the vacation time-sharing plan.

e. Copies of all liens, mortgages or other encumbrances on the accommodations or facilities which could affect the rights of the purchaser or his assignee, together with the location, date and filing books and page number where such documents are recorded.

f. A synopsis of any sales presentation made or to be made by the seller to the purchaser over the telephone or other electronic device.

g. A projected budget of all recurring expenses which may become the responsibility of time-sharing purchasers.

h. A copy of the public offering statement to be provided to each prospective purchaser.

i. Evidence that the time-sharing plan owner or his agent shall furnish a surety bond payable to the State of Alabama in the amount of \$100,000.00 with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to \$100,000.00 the aggregate sum of all judgments which may be recovered against the vacation time-sharing plan owner or seller for any actual loss or damage arising against such vacation time-sharing plan owner or seller from the activities of the time-sharing plan owner or seller, or their agents or representatives, related to the time-sharing plan. Such bond must remain in effect for as long as the time-sharing plan shall be registered. In the event such bond is revoked by the surety company, the time-sharing owner shall have 10 days in which to obtain a new bond and file such with the commission. The lack of a bond shall be grounds for the suspension of the registration of the time-sharing plan.

Upon receipt of all items required by this section, the commission shall determine the sufficiency thereof and upon satisfactory compliance with this article, shall issue its order approving their use. The vacation time-sharing plan shall then be deemed registered.

Promotional or advertising material developed after the initial registration of a time-sharing plan may be used without prior approval of the commission provided that such material is in

compliance with this article and further provided that it is submitted to the commission within 10 days after its initial public use.

(3) Fail to include in all advertising of any vacation time-sharing plan a statement which clearly states that the seller is offering a time-sharing interest.

(4) Fail to include in all advertising of any vacation time-sharing plan which offers a time-sharing interest of less than fee simple a statement which clearly states that the interest being offered is less than a fee simple ownership interest.

(5) Effective October 1, 1985, fail to provide each prospective purchaser a public offering statement in such form and under such terms as shall be required by commission rules and regulations.

(Acts 1983, No. 83-670, p. 1035, § 2; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**Annotations:**

Actionable nature of advertising impugning quality or worth of merchandise or products. 42 A.L.R.4th 318.

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

## ANNOTATIONS

### CASENOTES

**Cited** in *Knutilla v. Auto-Owners Ins. Co.*, 578 So.2d 1359 (Ala.Civ.App.1991).

### **§ 34-27-52. Acts constituting violation of article -- Failure to keep certain items among business records. [References](#)**

It shall be a violation of this article for any owner or business entity offering vacation time-sharing plans for sale to the public to fail to keep among its business records the following:

(1) A copy of each item required to be submitted to the commission under Section 34-27-51.

(2) A copy of the contract from each sale of the vacation time-sharing plan, which contract shall be retained for a period of at least three years after parties to the vacation time-sharing plan have completely performed all of their obligations thereunder.

(3) A list of all employees and independent contractors involved in the development, sale, or advertising of the vacation time-sharing plan or plans, including their last known mailing addresses, which list shall include all current employees and all previous employees whose employment has been terminated within the preceding 36 months.

(Acts 1983, No. 83-670, p. 1035, § 3; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-53. Acts constituting violation of article -- Failure to utilize, etc., fully completed copy of contract. [References](#)**

It shall be a violation of this article for the seller of a vacation time-sharing plan to fail to utilize and furnish the buyer with a fully completed copy of a contract pertaining to such sale at the time of its execution which shall include:

- (1) The actual date the contract is signed by all parties.
- (2) The name and address of the seller.
- (3) In immediate proximity to the space reserved in the contract for the signature of the buyer and in no smaller type than contained in the body of the contract:
  - a. In the case of a vacation time-sharing lease plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date. You may also cancel this contract at any time in case the accommodations or facilities are no longer available as provided in the contract. If you decide to cancel, you must notify the seller in writing of your intent to cancel by sending notice to (name of seller) by certified mail, return receipt requested at (seller's address)."
  - b. In the case of a vacation time-sharing ownership plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date, by notifying the seller in writing of your intent to cancel, sending his notice thereof by certified mail, return receipt requested."
  - c. It shall be a violation of this article for the seller of a vacation time-sharing ownership plan to fail to furnish the buyer with an inventory of all furniture, fixtures and appliances which will be located in the accommodation during the time period purchased under a vacation time-sharing ownership plan or at closing.

(Acts 1983, No. 83-670, p. 1035, § 4.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-54. Acts constituting violation of article -- Failure, etc., to honor buyer's request to cancel contract. [References](#)**

It shall be a violation of this article for the seller of vacation time-sharing plans, or his assignees, to fail or refuse to honor a buyer's request to cancel a contract as provided by Section 34-27-53 if such request is made; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct within a reasonable time the accommodations or facilities if destroyed or damaged; provided that such repair, replacement or reconstruction shall bring such accommodations or facilities back to a state reasonably the same as before the damage or destruction.

(Acts 1983, No. 83-670, p. 1035, § 5.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-55. Acts constituting violation of article -- Failure to refund all payments; failure to place all funds in escrow account. [References](#)**

It shall be a violation of this article for a seller of vacation time-sharing plans to:

(1) Fail to refund any and all payments made by the buyer under the contract and return any negotiable instrument, other than checks, executed by the buyer in connection with the contract or services within 20 days after receipt of notice of cancellation made pursuant to Section 34-27-53, if the buyer has not received any benefits pursuant to the contract.

(2) If the buyer has received any benefits pursuant to the contract, fail to refund within 30 days after receipt of notification of cancellation made pursuant to Section 34-27-53 or Section 34-27-54 any and all payments made by the buyer to the seller which exceed a pro rata portion of the total price, taking into consideration the cost of use of the time-share facilities at an average rental rate per unit for all time-share units, representing the proportion of any contract benefits actually received by the buyer during the time preceding cancellation.

(3) Fail to place in an escrow account 100 percent of the funds received from the purchasers of such plans, where the seller of the time-sharing plan transfers an interest herein to the purchaser, which escrow account shall provide that:

a. Its purpose is to protect the buyer's right to refund during the five day right to cancellation period provided in Section 34-27-53 or Section 34-27-54, and

b. Funds may be withdrawn by the seller upon transfer to the buyer after expiration of the respective cancellation period provided in such Sections 34-27-53 and 34-27-54.

(Acts 1983, No. 83-670, p. 1035, § 6; Acts 1984, No. 84-259, p. 431, § 1.)

## REFERENCES

## RESEARCH REFERENCES

### **American Digest System:**

Brokers 4, 5.

### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

## **§ 34-27-56. Acts constituting violation of article -- Misrepresentation. [References](#)**

It shall be a violation of this article for any seller of vacation time-sharing plans, or his assignees, to misrepresent in any manner the buyer's right to cancel provided by this article. (Acts 1983, No. 83-670, p. 1035, § 7.)

## REFERENCES

## RESEARCH REFERENCES

### **Annotations:**

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser. 34 A.L.R.4th 191.

### **American Digest System:**

Brokers 4, 5.

### **Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

## **§ 34-27-57. Acts constituting violation of article -- Sell, etc., interest in plan to third person that substantially affects rights of other owners. [References](#)**

(a) It shall be a violation of this article for any seller of vacation time-sharing plans to sell, lease, assign or otherwise transfer the seller's interest in the vacation time-sharing plan or the accommodations or facilities to a third party when such a sale, lease, assignment or other transfer substantially affects the rights of other owners or lessees of the time-share units, unless:

(1) The third party agrees in writing to:

a. Fully honor the rights of purchasers of the vacation time-sharing plan to occupy and use the accommodations or facilities; and

b. Fully honor rights of purchasers of the vacation time-sharing plan to cancel their contracts and receive an appropriate refund as provided in this article; and

c. Comply with the provisions of this article for as long as the third party continues to sell the vacation time-sharing plan, or for as long as purchasers of the vacation time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(2) The commission receives prior written notice of the intent to transfer the seller's interest; and

(3) Written notice is given to each purchaser of a vacation time-sharing plan affected thereby, by certified mail within 30 days of the transfer.

(b) The commission shall reserve the right to demand such additional information regarding the transfer as is reasonably necessary to determine to what extent the rights of other owners of



units or unit weeks within the subject time-sharing plan shall be affected and to determine whether the registration of the plan should continue, should be amended, or should be suspended or revoked.

(c) The provisions of this section shall not be construed to apply to the sale of a single unit or to prevent the seller's right to sell, discount, or hypothecate for value receivables in favor of any bank, mortgage company, or other lending institution and such transactions shall be exempt from the requirements of the section.

(Acts 1983, No. 83-670, p. 1035, § 8; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-58. Acts constituting violation of article -- Failure to place 50 percent of cash, etc., received in escrow; failure to provide liability insurance, etc. [References](#)**

(a) It shall be a violation of this article for a seller of vacation time-sharing lease plans to fail to:

(1) Place in escrow 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of such escrow account is to protect the purchaser's right to a refund if at any time the accommodations and facilities are no longer available as provided in the contract; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct, within a reasonable time, the accommodations or facilities, if destroyed or damaged.

b. The purchaser shall be entitled to a refund from the escrow account upon the conditions described above in an amount which represents the buyer's pro rata share of the moneys therein.

c. Funds may be withdrawn by the seller from the escrow account in the ratio of the amount of remaining time available for use by the purchaser of the vacation time-sharing lease plan in relation to the total time available to the purchaser at the time of purchase.

d. The escrow agent shall release or dispense funds from the escrow account to the seller of a vacation time-sharing lease plan only upon receipt of a sworn statement from the seller that the accommodations and facilities have been available for use by the purchaser according to the terms of the purchaser's contract.

(2) In lieu of the escrow account provided in subdivision (1), a seller of vacation time-sharing lease plans may:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities or accommodations.

Should net income from such escrowed receivables be insufficient to pay all liens or encumbrances as aforesaid, the escrow agent shall so notify the seller in writing, and the

seller shall within 15 days after notice pay unto the escrow agent the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2) a of subsection (a) of this section.

(3) Provide the purchaser with liability and property insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes, and assessments levied against the accommodations and facilities; or, in the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance repairs and management fees.

(4) Provide the purchaser with an instrument, in recordable form, which provides notice to all subsequent creditors of the seller of the existence of the vacation time-sharing plan rights of the purchaser. Such instrument shall be provided to the purchaser by the seller at the time of signing of the contract. When recorded, such instrument shall serve to protect the purchaser's interest in the seller's accommodations from any claims by subsequent creditors of the seller.

(5) Provide a document which explains the content, purpose and protection afforded to the purchaser by the documents described in subdivision (4) along with the procedure necessary to follow in order to secure to the purchaser the rights and protections which such documents provide.

(b) It shall be a violation of this article for a seller of vacation time-sharing ownership plans to fail to:

(1) Deposit with an escrow agent no less than 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of the escrow account required hereunder is to protect the purchaser's ownership interest in the accommodations or facilities and to provide funds from which periodic payments can be made to retire any outstanding indebtedness on the time-sharing facilities or accommodations.

b. The escrow agent shall release or dispense to the seller of the vacation time-sharing ownership plan funds from the escrow account, at least quarterly but not more frequently than monthly, in an amount which shall not exceed 100 percent of the sum of all accrued indebtedness secured by the time-sharing accommodations or facilities which funds shall be used by the seller solely for the retirement of that indebtedness.

c. Prior to the release or dispensing of such escrow funds, the seller shall furnish the escrow agent with a sworn statement which reveals by category the total amount of all liens or indebtedness secured by the time-sharing accommodations or facilities, the amount of indebtedness anticipated during the next succeeding reporting period and the amount of any deficit or surplus accruing from the preceding reporting period.

(2) In lieu of the escrow account provided in subdivision (1) of this subsection (b), a

seller of vacation time-sharing ownership plans may alternatively:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities and accommodations.

Should net income from such escrowed receivables be insufficient to pay all recurring debts as aforesaid, the escrow agent shall so notify the seller in writing and the seller shall within 15 days after notice pay into the escrow account the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2)a of this subsection (b).

(3) Provide the purchaser with liability and casualty insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes and assessments levied against the accommodations and facilities. In the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance, repairs and management fees.

(c) Any escrow account kept pursuant to this section may be discontinued when all liens or encumbrances on the subject of time-sharing accommodations and facilities have been fully discharged. When the value of the escrow account equals the sum of all mortgages, liens and indebtedness on the project secured by project property, the seller may reduce his payments into the escrow account to monthly amounts which will maintain the value of the escrow account at an amount equal to the total obligation represented by all mortgages, liens and indebtedness.

(d) The commission may at its discretion waive the requirement for a time-share plan to maintain an escrow account pursuant to this section upon proof satisfactory to the commission that the unit weeks being sold or leased through the respective time-sharing plan are being released from all liens or encumbrances at, or prior to, the time of the sale or lease.

(Acts 1983, No. 83-670, p. 1035, § 9; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-59. Acts constituting violation of article -- Failure to disclose total financial obligation, etc., in contract. [References](#)**

It shall be a violation of this section for any seller of vacation time-sharing plans to fail to fully disclose in the contract in boldface type of a size no smaller than any other type used in the body of the contract to purchaser:

(1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject.

(2) Any individual or business entity which has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed.

(3) The nature and duration of each agreement between the business offering the vacation time-sharing plans for sale and the individual or business entity managing the accommodations or other facilities.

(4) In immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of the same size as required by subdivision (3) of Section 34-27-53 a statement as follows:

"No purchaser should rely upon representations other than those included in the contract."

However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from oral statements.

(5) The date of availability of each amenity of the offered accommodations and facilities when they are not completed at the time of sale of such plan.

(6) The specific term of the contract.

(Acts 1983, No. 83-670, p. 1035, § 10.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

### **§ 34-27-60. Acts constituting violation of article -- Misrepresentation; waiver of rights of purchasers; sale, etc., without license; bad checks. [References](#)**

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Use any promotional device, including but not limited to sweepstakes, lodging certificates, gift awards, premiums, or discounts, without fully disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time-sharing plans and without fully disclosing the fair market value of each award or prize offered and the approximate odds of receiving each award or prize offered.

(2) Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time-sharing plans.

(3) Misrepresent the amount of time or period of time the accommodations and facilities will be available to any purchaser.

(4) Misrepresent or deceptively represent the location of the offered accommodations and facilities.

(5) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations and facilities.

(6) Misrepresent the nature or extent of any services incident to the accommodations and facilities.

(7) Make any misleading or deceptive representations with respect to the contents of the contract or the buyer's rights, privileges or benefits thereunder.

(8) Fail to honor and comply with all provisions of the contract with the purchaser.

(9) Misrepresent the conditions under which a customer may exchange his rights to an accommodation in one location for rights to an accommodation in another location.

(10) Include in any contract any provision purporting to waive any right or benefit provided for purchasers under this article, or to seek or solicit such a waiver.

(11) Do any other act which constitutes fraud, misrepresentation or failure to make a disclosure of a material fact.

(12) Perform any act for which a vacation time-sharing license is required unless the seller is either exempted from the license requirement, a duly authorized and licensed qualifying broker, or a duly licensed seller acting under the sponsorship and supervision of a qualifying broker.

(13) Allow an unlicensed person who is engaged or employed by him or who is under his control or supervision to perform any act for which a time-sharing sales license is required.

(14) Present to the Alabama Real Estate Commission, as payment for a fee or fine, a check that is returned due to there being insufficient funds in the account upon which it was drawn or due to such account being closed or not in existence.

(Acts 1983, No. 83-670, p. 1035, § 11; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4, 5.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-13.

**§ 34-27-61. Hearing; refusal, suspension or revocation of license; willful violation defined; escrow deficiency. [References](#)**

The commission may upon its own motion, or upon the verified complaint in writing of any person, hold a hearing regarding an alleged violation by any person or business entity of this article. Any person found guilty of having violated any provision of this article or any rule, regulation or order of the commission shall be subject to the refusal of a license, if not licensed; or, if licensed, to the suspension or revocation of such license and/or a monetary penalty of not less than \$25.00 nor more than \$1,000.00.

Such hearing shall be held in a manner prescribed by the Alabama Real Estate License Law and the rules and regulations of the Alabama Real Estate Commission. The reinstatement of a license suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

The penalties and procedures outlined in this section shall not be construed to supersede or

conflict with penalties and procedures outlined in other sections of this article.

Provided, that a deficiency in an escrow account required by this article, which results solely from the cancellation or worthlessness of receivables previously placed in escrow, shall not be considered a violation of this article. In the event of an escrow deficiency, a lender who has advanced funds to a project shall have no liability to contribute funds to the escrow to cure the deficiency, and the lender's lien on the property shall not be affected by the deficiency. (Acts 1983, No. 83-670, p. 1035, § 12; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 3.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

**§ 34-27-62. Enforcement and implementation of article; acts constituting misdemeanors; voidability of sales of unregistered plans, etc. [References](#)**

(a) The Alabama Real Estate Commission shall be responsible for the enforcement and implementation of this article, and the Attorney General of the State of Alabama, or the district attorney of any county of the State of Alabama upon request by the commission, shall assist the commission in the enforcement of this article and the prosecution of violations hereunder. The provisions of this article shall not be construed to limit in any manner the right of any party to bring a private action to enforce the provisions of this article. In addition to the administrative enforcement of this article by the commission, the following shall be Class A misdemeanors triable in the courts of Alabama:

(1) It shall be a Class A misdemeanor for any person, natural or legal, while within the borders of the State of Alabama, to participate in the sale or attempted sale of any time-share plan unless licensed to do so by the commission or exempted from such licensure by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(2) It shall be a Class A misdemeanor for any person, natural or legal, to or attempt to, sell, lease or otherwise market any interest in any vacation time-sharing plan not registered with the commission as a vacation time-sharing plan or exempted from such registration by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(b) Any time-sharing sale made in Alabama between a time-share purchaser and a seller for the purchase or lease of a time-share week or weeks in a vacation time-share plan which is not registered with the commission, or whose registration is under suspension, or which is under an order from the commission to cease and desist from sales, shall be voidable by the purchaser. An action to void such a transaction must be brought by the purchaser within three years of the date of the making of the lease or sales agreement. In any such action, the prevailing party may be awarded reasonable attorney fees as determined by the court.

(Acts 1983, No. 83-670, p. 1035, § 13; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**  
Brokers 5.

**Corpus Juris Secundum:**  
C.J.S. Brokers § 13.

§ 34-27-63. Filing of plan relating to units not substantially completed requires filing of additional documents. [References](#)

If a seller files with the commission any vacation time-sharing plan or any amendment thereto which describes or concerns time-sharing units, accommodations or facilities not substantially completed, the seller shall file with the commission the following:

- (1) A notarized statement showing all costs involved in completing each phase of the project.
- (2) A notarized statement of the time of completion of construction of each phase of the project.
- (3) Satisfactory evidence of sufficient funds to cover all costs to complete the project.
- (4) A copy of the executed construction contract and any other contracts for the completion of the project.
- (5) A 100 percent payment performance bond payable to the State of Alabama from a surety company authorized to do business in Alabama, covering the entire cost of construction necessary to complete the project.
- (6) If purchasers' funds are to be used in the construction of the project, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business with the state, which provides that:
  - a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the project; architectural, engineering, finance, and legal fees; and other costs for the completion of the project in proportion to the value of the work completed by the contractor as certified by a registered surveyor, architect, or engineer on bills submitted and approved by the lender of construction funds or the escrow agent;
  - b. Disbursements of the balance of purchasers' funds remaining after completion of the project may be made only after either the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's liens has expired, or the right to claim those liens has been waived or other adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's lien; and
  - c. Any other restrictions relative to the retention and disbursement of purchasers' funds required under the rules of the commission have been met; and
  - d. Any other materials or information required under the rules of the commission have been provided.
- (7) The commission shall not register or issue any order approving any vacation time-sharing plan unless the commission determines, on the basis of materials submitted by the developer, that the time-sharing units, accommodations, or facilities or any additions thereto will be completed.

(Acts 1983, No. 83-670, p. 1035, § 14; Acts 1985, No. 85-750, p. 1204, § 1.)



## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Estates in Property 1.

**Corpus Juris Secundum:**

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

**§ 34-27-64. Registration fees; assessment of costs of investigating violation of article.**

[Historical Notes](#)   [References](#)

(a) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). In addition to submitting an annual renewal fee, each time-sharing plan must submit an audited annual financial statement of the entity or person in whose name the plan is registered done by a certified public accountant and such other materials as the commission shall require for an annual registration renewal. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(b) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). All books, files, accounts and other documents pertaining to the advertisement and sale of vacation time-sharing plans located outside the state shall be subject to examination by the commission and the business entity whose documentation is being examined shall pay a fee of five hundred dollars (\$500) plus the actual expenses, including the cost of transportation, of the examiner representing the commission while he is absent from this office for purposes of conducting the examination. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(c) If the commission determines that the registration or operation of any vacation time-sharing plan violates the provisions of this article in such manner as indicates bad faith or dishonesty, the commission, after notice and hearing, may assess all reasonable costs of the investigation and prosecution of such violations.

(Acts 1983, No. 83-670, p. 1035, § 15; Acts 1985, No. 85-750, p. 1204, § 1; Act 2001-310, p. 391, § 1.)

### HISTORICAL NOTES

## HISTORY

### Amendment notes:

**The 2001 amendment**, effective April 25, 2001, in subsection (a) substituted "seven hundred fifty dollars (\$750)" for "\$200", deleted the second sentence, and added the final sentence; and added the final sentence; and in subsection (b) substituted "seven hundred fifty dollars (\$750)" for "\$500.00", substituted "seven hundred fifty dollars (\$750)" for "\$200.00", deleted the second sentence, substituted "five hundred dollars (\$500)" for "\$500.00", and added the final sentence.

## REFERENCES

### RESEARCH REFERENCES

#### American Digest System:

Estates in Property 1.

#### Corpus Juris Secundum:

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

### **§ 34-27-65. Proceeds from sale, etc., of lease plan exempt from Transient Occupancy Tax.**

#### References

The proceeds from the sale or resale of any vacation time-sharing lease plan shall be exempt from the Transient Occupancy Tax imposed by Section 40-26-1.  
(Acts 1983, No. 83-670, p. 1035, § 16.)

## REFERENCES

### ADMINISTRATIVE CODE

20A Ala. Admin. Code 810-6-5-.12, 810-6-5-.13, Department of Revenue; Use Tax Law, Lodgings Tax, etc.

### RESEARCH REFERENCES

#### American Digest System:

Innkeepers 4.

#### Corpus Juris Secundum:

C.J.S. Inn, Hotels and Eating Places §§ 8-9.

**§ 34-27-66. Examination required; application; qualifications; fee; forfeiture; license generally; issuance and renewal of license; notice of change of address. [References](#)**

(a) Any person desiring to act as a seller of vacation time-sharing plans shall file with the commission a written application upon such form as the commission shall designate and shall pass to the satisfaction of the commission the examination hereinafter prescribed.

(b) Prerequisites for taking the vacation time-sharing sales examination are as follows:

(1) Evidence satisfactory to the commission that the applicant bears a good reputation for honesty and truthfulness.

(2) The applicant should not have been convicted of any criminal offense involving moral turpitude or of any felony in this or any other state.

(3) The applicant must be at least 19 years of age.

(4) The applicant must be a citizen of the United States or shall possess a certification of lawful permanent residence issued by the United States government.

(c) The commission shall prepare and conduct an examination on the fundamentals of this article and related topics and shall schedule such examination at least quarterly. No applicant shall be entitled to examination unless all prerequisites enumerated above have been met as determined by the commission. The minimum passing grade shall be 70 percent.

(d) Every applicant shall pay the sum of \$75.00 for each examination taken. Should an applicant be scheduled and issued a permit for an examination and fail to appear, the entire amount of the examination fee will be forfeited. Liability for forfeiture occurs at the time the examination permit is issued. The applicant shall be allowed up to 60 days after notice of passing the examination to either be designated as a qualifying broker or to secure a qualifying broker under whom to be licensed. In the alternative, the applicant may place his license on inactive status with the commission within the allotted 60-day period. Every applicant shall also pay a license fee of \$50.00 upon successful completion of the examination, provided he submits the license fee along with appropriate documentation to the commission within the allotted 60-day period. The 60-day period shall begin on the date which the results of the applicant's examination are made available to the applicant. The results shall be mailed from the commission office, and the applicant will be considered to have received such notification three days from the date of mailing. Should an applicant not become licensed within 60 days after receiving notification of his having passed the examination, he shall be required to again meet the requirements of an original applicant before becoming licensed, including the taking and passing of the examination. The commission shall be entitled to contract with any outside source to prepare and conduct vacation time-sharing sales examinations in its behalf and to pay for the reasonable cost thereof from the examination fees collected.

(e) Vacation time-sharing sales licenses are due to be renewed annually on or before August 31, on a form prescribed by the commission. September 30 shall be the annual expiration date for such licenses. Any license renewed after August 31 and prior to January 1 of the following year shall be subject to a penalty fee of \$15.00 in addition to the annual license fee of \$50.00. On January 1 of the year following the expiration of a vacation time-sharing sales license, the license may no longer be renewed, and the former license holder shall be required to again meet the requirements of an original applicant before again becoming licensed, including the taking and passing of the license examination. Upon submission of a renewal request in such form as the commission shall prescribe and payment of a \$50.00 renewal fee, the commission shall issue

the appropriate license.

(f) The qualifying broker for a vacation time-sharing plan must meet all the general requirements for a time-sharing sales license and must have a current, active real estate broker's license issued under the Alabama Real Estate License Law as well as a time-sharing sales license. If the qualifying broker is not licensed on active status with a real estate company, he may place his real estate broker's license on active status in the name of the time-sharing plan.

(g) Each qualifying broker shall have the duty and responsibility of supervising each seller licensed under him and insuring that every seller licensed under him, as well as the vacation time-sharing plan for which he is the qualifying broker, complies with the provisions of this chapter, and the broker shall be responsible to any injured party for actual damages caused to such party by any violation of this chapter by any vacation time-sharing plan or seller for whom he is acting as qualifying broker.

(h) There shall be a license transfer fee of \$50.00 for any of the following: a change of qualifying broker; a change of name or address of the vacation time-sharing plan; a change of name of a licensee; a change of employment by a licensee; or the activation of an inactive license.

(i) A representative of the vacation time-sharing plan authorized to do so may designate an office located off the site of the time-sharing project as a branch sales office of the vacation time-sharing plan provided that a qualifying broker is designated for each such branch sales office.

(j) A real estate company licensed by the commission may act as an agent for the purpose of reselling time-shares for persons who each own no more than four unit weeks of a given time-sharing plan provided that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period; and further provided that the qualifying broker for such real estate company be licensed as a time-share seller by the commission and that any sales agent of the company who participates in the sale of time-shares be licensed by the commission as a time-share seller.

(k) No applicant to be a seller of vacation time-sharing plans shall be issued a license by the commission unless the applicant is designated as a qualifying broker by a representative of a vacation time-sharing plan or real estate company authorized to make such a designation, or unless the applicant is sponsored by a duly authorized qualifying broker who has signed a written statement accepting sponsorship of the applicant, or unless the applicant has his license issued on inactive status and maintained at the office of the commission.

(l) No vacation time-sharing licensee shall perform any of the acts authorized by such license until the license certificate is in his actual possession, if the licensee is a qualifying broker, or in the possession of his sponsoring broker, if the licensee is not a qualifying broker.

(m) A licensee may place his license on inactive status with the commission for a period of up to 24 consecutive months and may renew his license while it is on inactive status. No license which is on inactive status will be reactivated without the commission receiving evidence that the licensee's surety bond is in effect. Any license which has been on inactive status for longer than 24 consecutive months shall automatically expire as of the day following the 24-month period.

(n) It shall be the duty of each licensee to notify the commission of any change of address, business or residential, within 30 days of such change.

(Acts 1983, No. 83-670, p. 1035, § 17; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-375, p. 560, § 1; Acts 1989, No. 89-284, p. 447, § 3.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 3.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

#### **§ 34-27-67. Registration required of every plan offered for sale. [References](#)**

Every vacation time-sharing plan for sale or offered for sale in this state shall be registered with the Alabama Real Estate Commission as follows:

(1) Upon receipt of an application for registration in the required form, the commission shall forthwith initiate an examination to determine that:

a. The seller may convey or cause to be conveyed the vacation time-sharing plan offered for sale if the purchaser complies with the terms of the offer.

b. The advertising material and general promotional plan are not false or misleading as determined by the commission.

c. The requirements of this article and the rules of the commission have been fulfilled.

d. The seller has not, or, if a corporation, its officers, directors, and principals have not been convicted of any crime involving land dispositions, any crime of moral turpitude, any securities law violation, fraudulent business activity, or any aspect of the vacation time-sharing business in this state, the United States, or any other state or foreign country within the 10 years immediately preceding the date of application, and has not been subject to any injunction or administrative order within the preceding 10 years involving any of the activities above.

(2) Upon receipt of the application for registration in required form, the commission shall issue a notice of filing to the applicant. If within 45 days from the date of the notice of filing, the commission affirmatively determines upon inquiry and examination that the requirements of this article have been met, the commission shall enter an order registering the vacation time-sharing plan or rejecting the registration. If no order of rejection is entered within 45 days from the date of notice of filing, the vacation time-sharing plan shall be deemed registered unless the applicant has consented in writing to a delay. No reasonable request for an extension of time by the commission shall be withheld; provided that if the commission determines upon inquiry and examination that any of the requirements of this article have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

(Acts 1983, No. 83-670, p. 1035, § 18; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

## RESEARCH REFERENCES

### **American Digest System:**

Estates in Property 1.

### **Corpus Juris Secundum:**

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

### **§ 34-27-68. Commission may seek injunctive relief, etc., for violation of article; investigation; revocation of registration. [References](#)**

(a) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this article or rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with this article or any rule or order of the commission or to have a receiver or conservator appointed. To prevail in such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

(b) The commission may:

(1) Make any public or private investigation which it deems necessary, either within or outside of this state, to determine whether any person has violated or is about to violate this article or any rule or order hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder.

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the commission may determine, as to all facts and circumstances concerning the matter to be investigated.

(3) For the purpose of any investigation or proceeding hereunder, the commission or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence.

(4) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected hereby, the commission, through the Attorney General may apply to the circuit court for an order compelling compliance.

(5) Issue an order requiring the seller to cease and desist from any unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this article, if, after notice and hearing, the commission determines that a seller has violated any provisions of this article.

(6) Make findings of fact in writing that the public interest may be harmed by delay in issuing an order and in such case may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a cease and desist order to the seller. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

(7) Revoke or suspend the registration of a vacation time-sharing plan if, after notice and hearing, upon a written finding of fact, it determines that the seller or sellers in whose name the plan is registered, or any agent therefor, has:

- a. Failed to comply with the terms of any order of the commission; or
- b. Been convicted in any court of competent jurisdiction subsequent to filing of the application for registration, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing; or
- c. Had a final judgment rendered against him in any court of competent jurisdiction, when such judgment involved the sale, marketing or operation of any time-share plan or real estate transaction; or
- d. Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of vacation time-sharing plan purchasers; or
- e. Failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or advertisement; or
- f. Made an intentional misrepresentation or concealed a material fact in an application for registration; or
- g. Made a misrepresentation or concealed any material fact in the sale, marketing or operation of a registered time-sharing plan; or
- h. Failed to comply with the terms of a sales contract; or
- i. Failed to make timely delivery of a deed to any purchaser to whom a deed is due to be delivered; or
- j. Violated any other provision of this article or any rule or regulation of the commission.

The reinstatement of a registration suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

(8) Issue a cease and desist order instead of revoking a registration if it finds, after notice and hearing, that the seller has been guilty of a violation for which revocation could be ordered.

(9) In lieu of, or in addition to, revoking or suspending a registration or issuing a cease and desist order, impose a penalty of not less than \$100.00 nor more than \$2,000.00 per violation upon the seller(s) in whose name(s) the plan is registered if it finds, after notice and hearing, that such seller(s), or any agent therefor, has been guilty of a violation for which revocation or suspension could be ordered.

(Acts 1983, No. 83-670, p. 1035, § 19; Acts 1985, No. 85-750, p. 1204, § 1.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Injunction 89(5).

**Corpus Juris Secundum:**

C.J.S. Injunctions §§ 133-135.

**§ 34-27-69. Surety bond; suspension, etc., of license for violation of article; reinstatement; relicensure; board must be notified of initiation, etc., of legal action. [References](#)**

(a) Every applicant for a license under this article, either original or renewal, shall furnish a surety bond payable to the State of Alabama in the amount of \$5,000.00 if a time-sharing salesman or \$10,000.00 if a broker, with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein will pay up to \$5,000.00 or \$10,000.00, respectively, the aggregate sum of all judgments which may be recovered against such licensee for actual loss or damage arising from his activities conducted under this article. Said bond shall be filed with the Alabama Real Estate Commission prior to the issuance of such license. A new bond or a renewal or continuation of the original bond shall be required for each licensing period. If a continuous bond is filed with the commission prior to the issuance of such license, no such renewal bond must be filed as long as the continuous bond remains in force and effect. In the event the continuous bond is revoked by the surety company, it shall immediately notify the commission and the licensee shall have 20 days in which to file another bond with the Alabama Real Estate Commission or his license shall be suspended until such new bond is filed.

(b) If at any time a final judgment is rendered against a licensee under this article and the final judgment shall result from or involve any activity covered by this article, the license of the licensee shall be automatically suspended. A judgment shall be considered final when no further relief is available from said judgment in the appellate courts of Alabama. In case of such suspension of license, the commission shall give notice to the licensee that his license is suspended, and said licensee shall deliver this license to the commission for disposition. Upon request by the suspended licensee, the commission will set a date designating a time and place thereon for a hearing on the question of whether the license under suspension should be revoked, whether the suspension should be continued for a designated period or whether the suspension should be continued until terminated by the commission upon the fulfillment of reasonable conditions imposed by the commission. The hearing shall be conducted in accordance with Section 34-27-37 and such appropriate rules and regulations as may be adopted from time to time by the Alabama Real Estate Commission. No licensee under this article whose license hereunder has been revoked may apply for another license hereunder until at least two years after the date of such revocation; and, in the event of such application for reinstatement, he shall meet all the requirements imposed upon an original applicant for a license under this article; and, furthermore, shall not be relicensed without approval of such relicensing by a majority of the members of the Alabama Real Estate Commission.

(c) Every licensee under this article shall be required to notify the Alabama Real Estate Commission of any civil or criminal action filed or initiated against such licensee within 10 days of the receipt of notice by the licensee of the pending civil or criminal action when the civil or criminal action involves a transaction under this article, or involves the indebtedness of the licensee concerning expenses incurred in the development or continuation of a time-sharing plan, or involves an alleged act of fraud, theft, misrepresentation, embezzlement, or extortion, or involves an alleged felony. The notification shall be in writing and shall include a copy of any civil complaint or other document alleging a complaint or criminal offense; or, if the licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the substance of the civil or criminal action.

(d) Every licensee under this article shall be required to notify the Alabama real estate commission of the outcome of any civil or criminal action of the type described in subsection (c) of this section within 10 days of the notice to the licensee of such outcome. This notification



shall be in writing and shall include a copy of any judgment, order or other pertinent document issued by the court having jurisdiction of the matter; or, if licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the nature of the verdict, settlement, dismissal, or other outcome of the subject civil or criminal action. (Acts 1983, No. 83-670, p. 1035, § 20.)

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 3.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 14-24.

## ARTICLE 4. REAL ESTATE CONSUMER'S AGENCY AND DISCLOSURE ACT.

### § 34-27-80. Short title. [Historical Notes](#)

This article shall be known and may be cited as the "Real Estate Consumer's Agency and Disclosure Act."

(Acts 1995, No. 95-211, p. 341, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective October 1, 1996.

### § 34-27-81. Definitions. [Historical Notes](#)

As used in this article, the following words shall have the following meanings:

(1) Agency agreement. A written agreement between a broker and a client which creates a fiduciary relationship between the broker and a principal, who is commonly referred to as a client.

(2) Broker. Any person licensed as a real estate broker pursuant to Articles 1 and 2 of Chapter 27 of this title.

(3) Brokerage agreement. A specific written agreement between a brokerage firm and a consumer which establishes a brokerage relationship. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services to be provided.

(4) Brokerage service. Any service, except for rental or property management services, provided by a broker or licensee to another person and includes all activities for which a real estate license is required under Articles 1 and 2 of Chapter 27 of this title.

(5) Consumer. A person who obtains information, advice, or services concerning real estate from a real estate licensee.

(6) Client. A person who has an agency agreement with a broker for brokerage service, whether he or she be buyer or seller.

(7) Customer. A person who is provided brokerage services by a broker or licensee but who is not a client of the broker.

(8) Dual agency. An agency relationship in which the same brokerage firm represents both the seller and the buyer in the same real estate transaction. Circumstances which establish a dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(9) Informed consent. A consumer's agreement to allow something to happen which is based upon full disclosure of facts needed to choose appropriate brokerage services.

(10) Licensee. Any broker, salesperson, or company.

(11) Limited consensual dual agent. A licensee who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as an agent for both the buyer and seller. Circumstances which establish dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(12) Material fact. A fact that is of significance to a reasonable party which affects the party's decision to enter into a real estate contract.

(13) Qualifying broker. A broker under whom a corporation, partnership, or branch office is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company, or proprietorship and all real estate licensees licensed therewith.

(14) Real estate transaction. The purchase, sale, lease and rental, option, or exchange of an interest in real estate.

(15) Single agent. A licensee who is engaged by and represents only one party in a real estate transaction. A single agent includes, but is not limited to, one of the following:

a. Buyer's agent, which means a broker or licensee who is engaged by and represents only the buyer in a real estate transaction.

b. Seller's agent, which means a broker or licensee who is engaged by and represents only the seller in a real estate transaction.

(16) Sub-agent. A licensee who is empowered to act for another broker in performing real estate brokerage tasks for a principal, and who owes the same duties to the principal as the agent of the principal.

(17) Transaction broker. A licensee who assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.

(Acts 1995, No. 95-211, p. 341, § 2; Act 98-618, p. 1359, § 1.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

**Amendment notes:**

**The 1998 amendment**, effective August 1, 1998, redesignated subdivisions (8)-(17) as subdivisions (17), (8), (13), (9)-(12) and (14)-(16), respectively, in subdivision (17), as so redesignated, substituted "Transaction broker." for "Contract broker.", and substituted "that party" for "any party".

**§ 34-27-82. Roles and duties of licensees; written disclosure documents; exceptions; brokerage agreements.** [Historical Notes](#) [References](#)

(a) When engaged in any real estate transaction, the licensee may act as a single agent, sub-agent, a limited consensual dual agent, or as a transaction broker.

(b) At the initial contact between a licensee and the consumer and until such time a broker enters into a specific written agreement to establish an agency relationship with one or more of the parties to a transaction, the licensee shall not be considered an agent of that consumer. An agency relationship shall not be assumed, implied, or created without a written bilateral agreement establishing the terms of the agency relationship.

(c) As soon as reasonably possible and before any confidential information is disclosed to any other person by a licensee, the licensee shall provide a written disclosure form to a consumer for signature describing the alternative types of brokerage services, as identified in subsection (a), that are available to clients and customers of real estate brokerage companies. The licensee shall also inform a consumer as to the specific types of brokerage services that are provided by his or her company. A broker shall not be required to offer or engage in any one or in all of the alternative brokerage arrangements specified in subsection (a). The licensee will provide a written form to the consumer for their signature describing the alternative types of brokerage arrangements available. All rental or property management services are excluded from the requirements of this subsection.

(d) A licensee shall not be required to comply with the provisions of subsection (c) when engaged in transactions with any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, any partnership created under the Uniform Partnership Act (commencing at Section 10-8A-101), real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.

(e) After disclosure, the consumer may make an affirmative election of a specific type of brokerage arrangement that is available from the real estate brokerage company. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide. In the absence of a signed brokerage agreement between the parties, the transaction brokerage relationship shall remain in effect.

(f) When serving as a transaction broker, the duties of the licensee to all the parties to a real estate transaction are limited to those which are enumerated in Section 34-27-84. A signed brokerage agreement between the parties or, in the absence of a signed brokerage agreement, the continuation of the transaction brokerage relationship, shall constitute informed consent by the consumer as to the services the consumer shall receive from the broker.

(g) Disclosure forms shall be provided to buyers and sellers. All real estate brokerage firms operating within the State of Alabama shall use the same agency disclosure forms. Disclosure forms describing the alternative types of brokerage services identified above shall be written by

the Alabama Real Estate Commission.

(h) Nothing in this section shall prohibit the consumer from entering into a written contract with a broker which contains provisions for services not specifically identified in the written disclosure form.

(Acts 1995, No. 95-211, p. 341, § 3; Act 98-618, p. 1359, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section became effective October 1, 1996.

#### Amendment notes:

**The 1998 amendment**, effective August 1, 1998, in subsection (a) substituted "transaction broker" for "contract broker"; in subsection (b), in the first sentence substituted "consumer and until such time" for "public and until the time", substituted "the licensee shall not be considered an agent of that consumer" for "the broker shall be considered to be a contract broker and shall not be considered an agent of any party in the transaction"; redesignated former subsections (d) to (g) as subsections (e) to (h), respectively; inserted subsection (d); in subsection (f), as so redesignated, substituted "transaction broker" for "contract broker" in two places; and made nonsubstantive changes.

#### Code Commissioner's Notes

In 1998, the Code Commissioner in the last sentence of subsection (e) inserted "transaction" for "contract" preceding "brokerage relationship" to conform the language to other amendatory changes and to correct an apparent clerical error.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.13, Real Estate Board; Disciplinary Actions: Agency/Brokerage Services Disclosure.

### RESEARCH REFERENCES

#### American Digest System:

Brokers 3, 4.

#### Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12, 14-24.

### § 34-27-83. Agency disclosure office policy. [Historical Notes](#) [References](#)

Any broker acting in a real estate transaction shall adopt a written agency disclosure office policy which specifically enumerates the types of brokerage service arrangements a licensee may offer or accept.

(a) The qualifying broker for each brokerage company shall provide every licensee a copy of the agency disclosure policy regarding the types of brokerage services offered by their company. This policy shall be explained to all licensees at least once a year.

(b) A form acknowledging receipt of the office policy statement and a satisfactory

explanation of its contents shall be signed by each licensee and a copy retained by the brokerage company for three years.  
(Acts 1995, No. 95-211, p. 341, § 4.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.14, Real Estate Board; Disciplinary Actions: Agency/Brokerage Office Policy.

### RESEARCH REFERENCES

**American Digest System:**

Brokers 4.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-12.

## § 34-27-84. Obligations of licensees. [Historical Notes](#) [References](#)

(a) Licensees shall have all of the following obligations to all parties in a real estate transaction:

(1) To provide brokerage services to all parties to the transaction honestly and in good faith.

(2) To exercise reasonable skill and care in providing brokerage services to all parties.

(3) To keep confidential any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of this information is required by law, violates a fiduciary duty to a client, becomes public knowledge, or is authorized by the party in writing.

(4) To account for all property coming into the possession of the licensee that belongs to any party to the real estate transaction.

(5) When assisting a party in the negotiation of a real estate transaction, to present all written offers in a timely and truthful manner.

(6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.

(b) A licensee may provide requested information which affects a transaction to any party who requests the information, unless disclosure of the information is prohibited by law or in this article.

(Acts 1995, No. 95-211, p. 341, § 5.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

### REFERENCES

#### RESEARCH REFERENCES

**American Digest System:**

Brokers 3, 4.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-12, 14-24.

**§ 34-27-85. Services licensees required to provide.** [Historical Notes](#) [References](#)

(a) In addition to the duties enumerated in Section 34-27-84, a licensee shall provide all of the following services to clients:

(1) Loyally represent the best interests of the client by placing the interests of the client ahead of the interests of any other party, unless loyalty to a client violates the duties of the licensee to other parties under Section 34-27-84, or is otherwise prohibited by law.

(2) Disclose to the client all information known by the licensee that is material to the transaction and not discoverable by the client through reasonable investigation and observation, except for confidential information as provided in subdivision (3) of subsection (a) of Section 34-27-84. A licensee shall have no affirmative duty to discover the information.

(3) Fulfill any obligation required by the agency agreement, and any lawful instructions of the client that are within the scope of the agency agreement, that are not inconsistent with other duties as enumerated in this article.

(b) A broker who represents more than one client in a real estate transaction owes the duties as specified in subsection (a) to each client, except where the duties to one client will violate the fiduciary duties of the licensee to other clients.

(c) A broker may provide brokerage services as a limited consensual dual agent only with the prior written, informed consent of all clients of the broker in the transaction.  
(Acts 1995, No. 95-211, p. 341, § 6.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

### REFERENCES

## RESEARCH REFERENCES

**American Digest System:**

Brokers 4.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 6-12.

### **§ 34-27-86. Misrepresentation or false information given by licensee.** [Historical Notes](#) [References](#)

(a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made by the client to the broker.

(b) A licensee shall not be liable for providing false information to a party in a real estate transaction if the false information was provided to the licensee by a client of the licensee or by a customer or by another licensee unless the licensee knows or should have known that the information was false.

(Acts 1995, No. 95-211, p. 341, § 7.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

## REFERENCES

## RESEARCH REFERENCES

**American Digest System:**

Brokers 102.

**Corpus Juris Secundum:**

C.J.S. Brokers §§ 90, 95, 98, 104, 106-107.

### **§ 34-27-87. Duties supersede duties based on common law.** [Historical Notes](#) [References](#)

The duties of licensees as specified in this article or in rules promulgated by the Alabama Real Estate Commission shall supersede any duties of a licensee to a party to a real estate transaction which are based upon common law principles of agency to the extent that those common law duties are inconsistent with the duties of licensees as specified in this article.

(Acts 1995, No. 95-211, p. 341, § 8.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective October 1, 1996.

## REFERENCES

### ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.13, 790-X-3-.14, Real Estate Board; Disciplinary Actions.

#### **§ 34-27-88. Violations.** [Historical Notes](#)

A violation or disregard of any provision of this article shall constitute a violation actionable by the commission pursuant to Section 34-27-36, as amended.  
(Acts 1995, No. 95-211, p. 341, § 9.)

## HISTORICAL NOTES

### HISTORY

#### **Effective date:**

The act which added this section became effective October 1, 1996.

## **ARTICLE 5. INTERFERENCE WITH A REAL ESTATE BROKERAGE RELATIONSHIP.**

#### **§ 34-27-100. Definitions.** [Historical Notes](#)

For the purposes of this article, the following terms shall have the following meanings:

(1) Actual introduction. a. When the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to the time the customer has executed a real estate brokerage services disclosure form or waived execution in writing or the customer has executed a buyer's agency agreement, property listing agreement, or a transaction brokerage agreement; or

b. For real estate transactions in which the law of this state does not require the presentation of a real estate brokerage services disclosure form, when the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to any contact between the buyer, seller, landlord, or tenant and the real estate licensee during which their real estate business has been discussed.

(2) Interference with a real estate brokerage relationship. Demanding a referral fee from a real estate licensee when reasonable cause for payment does not exist. The term "interference with a real estate brokerage relationship" may also include a threat by a third party to reduce, withhold, or eliminate any relocation or other benefits, or the actual reduction, withholding, or elimination of any relocation or other benefit, in order to generate a referral fee from a real estate broker when reasonable cause for payment does not exist. Notwithstanding the foregoing, either of the following shall not constitute interference with a real estate brokerage relationship:

a. Communications between an employer or its representative and an employee



concerning relocation policies and benefits.

b. Advising a party of the right to allow a brokerage relationship to expire pursuant to its own terms or not to renew the brokerage relationship upon expiration.

(3) Real estate brokerage relationship. A relationship entered into between a real estate broker or salesperson and a buyer, seller, landlord, or tenant under which the real estate broker or salesperson engages in any of the acts set forth in Alabama real estate license law, but the relationship does not exist prior to actual introduction of the relationship as provided in subdivision (1).

(4) Reasonable cause for payment. When an actual introduction of business has been made, a subagency relationship between brokers exists, a contractual referral fee relationship or other agreement exists, or a contractual cooperative brokerage relationship exists.

(5) Referral fee. Any fee or commission paid by a real estate licensee to any person or entity, other than a cooperative commission offered by a listing real estate broker to a selling real estate broker or by a selling real estate broker to a listing real estate broker.

(Act 2000-210, p. 277, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section is effective April 4, 2000.

### § 34-27-101. Violations; damages. [Historical Notes](#) [References](#)

(a) No licensed real estate broker shall be required to pay a referral fee or commission when reasonable cause for payment does not exist.

(b) No third party shall knowingly interfere with the real estate brokerage relationship of a real estate licensee.

(c) Any person aggrieved by a violation of any provision of this article may bring a civil action in any court of competent jurisdiction. The damages recoverable in such an action shall be actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any violation of this article, plus reasonable attorney fees and expenses.

(Act 2000-210, p. 277, § 2.)

## HISTORICAL NOTES

### HISTORY

#### Effective date:

The act which added this section is effective April 4, 2000.

## REFERENCES

### RESEARCH REFERENCES

**American Digest System:**

Brokers 66, 106; Torts 12.

**Corpus Juris Secundum:**

C.J.S. Agency § 24; Brokers §§ 100, 102, 108-115, 135, 141, 185; Torts §§ 54, 59-65.

## Commission Members



September 2, 1999

Mr. Calvin J. Cooper  
Examiner of Public Accounts  
Alabama Department of Examiners of Public Accounts  
Post Office Box 302251  
Montgomery, Alabama 36130-2251

Dear Mr. Cooper:

In a recent phone call regarding the Sunset Committee audit, you requested a letter containing the following information.

Commission members currently holding office:

MEMBER'S NAME	TITLE AS OF 09/01/99	CURRENT MAILING ADDRESS	TERM EXPIRES MO/YR
George P. Hayes	Commissioner	Post Office Box 190 Gardendale, AL 35071	09/2001
Gordon Henderson	Commissioner	Post Office Box 268 Albertville, AL 35950	09/2003
S. Starke Irvine	Chairman	Post Office Box 2497 Daphne, AL 36526-2497	09/2001
Chester D. Mallory	Commissioner	Post Office Box 6056 Montgomery, AL 36106	09/2003
Gloria B. Nicholson	Commissioner	1725 E University Dr Auburn, AL 36830	09/2001
Charles C. Nicrosi	Commissioner	Post Office Box 11633 Montgomery, AL 36111-0633	09/2000
Bill E. Poole	Vice Chairman	925A Franklin St Huntsville, AL 35801	09/2002
Crawford Welch	Commissioner	Post Office Box 230995 Montgomery, AL 36123	09/2001
Ruth T. Whitley	Commissioner	1809 Skyland Blv East Tuscaloosa, AL 35405	09/2004

My name is D. Philip Lasater and my title is Executive Director. The Commission's current mailing address is:

ALABAMA REAL ESTATE COMMISSION  
1201 CARMICHAEL WY  
MONTGOMERY AL 36106-3672

Currently, the Commission's telephone number is (334)242-5544 and the fax number is (334)270-9118.

Calvin J. Cooper  
September 2, 1999  
Page Two

Above-listed Commission members who are holding office due to statutory requirements are Chester Mallory (§34-27-7(d)) and Crawford Welch (§34-27-7(e)).

Copies of the members' appointment letters are attached. If you require additional information, please just let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Philip Lasater". The signature is written in a cursive, flowing style.

D. Philip Lasater  
Executive Director

DPL:aff  
Attachments: 9

State of Alabama  
**REAL ESTATE**  
Commission

October 3, 2003

Mr. John E. Norris, Director  
Operational Division  
State of Alabama Department of  
Public Accounts  
P O Box 302251  
Montgomery, Alabama 36130-2251

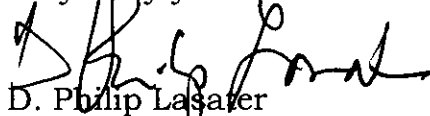
Dear Mr. Norris

This is to reply to the significant item of your October 2 correspondence. All Commission members are appointed by the Governor and confirmed by the Senate.

Documentation is enclosed of the request for board member appointment and qualification information from then Governor Siegelman's appointment Secretary and a copy of our response. Additionally, copies of the correspondence and a record of conversations related to our advising the appointing authority and Examiners of our discovery that Mr. Hays had been previously licensed within the last 10 years prior to his appointment.

Upon consultation with our Chairman Bill Poole and our General Counsel, Assistant Attorney General Charles Sowell, it was our belief any duty the Real Estate Commission had in addressing to the question of qualification had been satisfied by advising the Governor's legal counsel. We also informed Examiners of the circumstances we found ourselves and the manner we were proceeding.

Very truly yours



D. Philip Lasater  
Executive Director

Enclosures

C Commissioners

1201 Carmichael Way

Montgomery, Alabama 36106

Telephone 334.242.5544

Fax 334.270.9118

Email arec@rec.state.al.us

COMMISSIONERS

Bill E. Poole, Chairman

Roy F. Bragg

Thomas L. Hays

Gordon Henderson

Robert S. Hewes

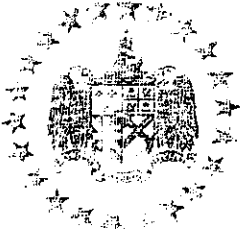
Sheila S. Hodges

Lyman A. Lovejoy

Chester D. Mallory

Ruth T. Whitley

D. Phillip Lasater, Director



OFFICE OF THE GOVERNOR  
STATE OF ALABAMA

DON SIEGELMAN  
GOVERNOR

STATE CAPITOL  
600 DEXTER AVENUE, ROOM N-104  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-0937

March 18, 2002

Mr. Thomas L. Hays  
2821 Stratford Road  
Birmingham, Alabama 35213-3429

Dear Tom:

By this letter, I hereby appoint you, upon Senate confirmation, to the Alabama Real Estate Commission as the consumer representative. Your appointment is effective immediately. You will be replacing Crawford Welch. Your term will expire September 30, 2006.

I appreciate your serving in this capacity, and I am confident you will render a valuable service to the citizens of Alabama.

I look forward to working with you.

Sincerely,

A handwritten signature of Don Siegelman in black ink.

Don Siegelman  
Governor

DS:JH:oi

cc: Dannie Shockley  
Karry Fraser  
Jim Buckalew  
Philip Lasater  
Tom Layfield

SCF No. 49

Board Real Estate Commission

Appointee Thomas L. Hays

**RULE 32 SUSPENDED BY UNANIMOUS CON-  
SENT FOR IMMEDIATE CONSIDERATION**

\_\_\_\_\_, 200

SENATE 3-21, 200 2  
RD 1 RFD Confirmations

RD 1 RFD Confirmations

**This confirmation was referred to the  
Standing Committee of the Senate on**

## Confirmations

and was acted upon by such Committee in Session and is by order of the Committee returned therefrom as

**by a vote of:**

Years 9 Nays 0 Abstain 0  
this 2nd day of April, 2002

this 2nd day of April, 2002.

E.B. McLean

### Chairperson

**RULE 48(6) SUSPENDED BY UNANIMOUS  
CONSENT FOR IMMEDIATE CONSIDERA-  
TION**      11      3

4-11, 2002

**CONFIRMED BY SENATE**

4-11 , 200 2

Yeas 30 Nays 0 Abstain     

**McDOWELL LEE, SECRETARY**

**Referred To the Senate Committee On  
*Rules***

\_\_\_\_\_, 200

**This confirmation was referred to the  
Standing Committee of the Senate on**

## Rules

and was acted upon by such Committee in Session and is by order of the Committee returned therefrom as

**by a vote of:**

Yeas \_\_\_\_\_ Nays \_\_\_\_\_ Abstain \_\_\_\_\_

**this** \_\_\_\_\_ **day of** \_\_\_\_\_, 200

**Chairperson**

## SENATE RECONSIDERED

\_\_\_\_\_ , 200

Yeas \_\_\_\_\_ Nays \_\_\_\_\_ Abstain \_\_\_\_\_

**Recommended To the Senate Committee**  
**On**

\_\_\_\_\_ , 200

## REJECTED BY SENATE

\_\_\_\_\_ , 200

Yeas\_\_\_\_Nays\_\_\_\_Abstain

**McDOWELL LEE, SECRETARY**



OFFICE OF THE GOVERNOR

DON SIEGELMAN  
GOVERNOR

STATE OF ALABAMA

STATE CAPITOL  
600 DEXTER AVENUE, ROOM N-104  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
Fax: (334) 242-0937

## MESSAGE FROM THE GOVERNOR

March 18, 2002

To The Senate of Alabama  
Alabama State House  
Montgomery, Alabama 36130

Ladies and Gentlemen:

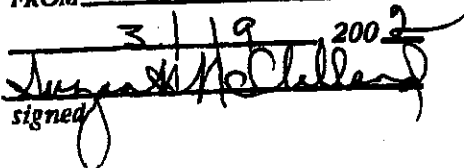
I herewith transmit to you a message from the Governor relative to the Alabama Real Estate Commission.

Respectfully submitted,

  
Josh Hayes  
Appointments Secretary

RECEIVED IN OFFICE OF  
SECRETARY OF SENATE

FROM Governor's Office

3/19/2002  
  
signed





State of Alabama  
**REAL ESTATE**  
Commission

1201 Carmichael Way  
Montgomery, Alabama 36106  
Telephone 334.242.5544  
Fax 334.270.9118  
Email [arec@arec.state.al.us](mailto:arec@arec.state.al.us)

April 29, 2002

Mr. John Norris  
Director of Operational Audits  
State of Alabama  
Department of Examiners of Public Accounts  
P. O. Box 302251  
Montgomery, Alabama 36130-2251

Re: Real Estate Commission Consumer appointee

Dear Mr. Norris

This is to confirm what information we shared as a matter of record and for any advisable instruction. It came to our attention through a review of licensee records that Mr. Thomas L. Hays who had been appointed as the consumer member to the Real Estate Commission and after he was confirmed by the Senate had a real estate license as recent as 1997. The statutory criteria for eligibility of appointment states that an individual must not have been licensed in the last ten years.

It has been clearly my understanding and consistent practice not to be involved in the appointment or confirmation of commissioners. It has always been understood to be a matter of the appointing authority, the Governor, and the confirming authority, the Senate. So this kind of situation has not arisen before. My decision was to advise the Governor's office through his Chief Legal Counsel Mr. Ted Hosp. Charles Sowell, the Commission's General Counsel drafted correspondence at my direction in order that the Governor might have the earliest opportunity possible to take any action if any were so deemed necessary.

Our Chief Accountant also being aware of the qualification question had a concern about removing Mr. Welch from the Commission payroll and adding Mr. Hays if the qualification question effected the validity of the confirmation.

COMMISSIONERS

Bill E. Poole, Chairman

Roy F. Bragg

Thomas L. Hays

Gordon Henderson

Robert S. Hewes

Shelia S. Hodges

Lyman A. Lovejoy

Chester D. Mallory

Ruth T. Whitbey

D. Phillip Lasater, Director

Page 2

We had concluded that Mr. Hays had been duly appointed and confirmed by those entities empowered to do so and that the Secretary of the Senate had transmitted the official action by which we rely upon to transition incoming and out going commissioners. This you also confirmed as the appropriate course of action under the circumstances.

Our Commission Chair has been advised of our actions and communications and concurs. Mr. Hays was seated and served in his appointed capacity at the Commission's meeting last Friday April 26.

Thank you for your accessibility and willingness to provide guidance and clarification on matters that are sometimes for various reasons are unclear. Allow me also to add here that the seminar you all conducted was filled with valuable and meaningful information. I took the opportunity to have most divisional supervisors attend. It was most helpful and instructive with representative of the feedback including statements like "I understand why we do some of the things the way we do them now. I did not realize that we **had** to do it that way for a legal reason". Sometimes the source of information makes a difference in how the whole message is heard.

We welcome the opportunity to work in cooperation in the respective roles that is ours to fill.

Very truly yours

D. Philip Lasater  
Executive Director

## **Janie Jordan**

---

**From:** Philip Lasater  
**Sent:** Thursday, April 18, 2002 2:57 PM  
**To:** Janie Jordan  
**Subject:** RE: Hays

Yes.....you understood correctly.....to quote Mr. Norris He said "he (Mr. Hays) has been appointed, confirmed and deserves to be paid."

We have provided information to the Governor's legal counsel. The appointment is a matter between the appointing and confirming authorities. I have made Chairman Poole aware of this and he concurs that it is not ours to do more with.  
Thanks

—Original Message—

**From:** Janie Jordan  
**Sent:** Thursday, April 18, 2002 2:51 PM  
**To:** Philip Lasater  
**Subject:** Hays

DPL,

We need to input information today to get the correct pay checks for Welsch and Hays.

I understood from you yesterday that you had talked to John Norris and he said Hays was confirmed, he is a commissioner as of the confirmation date.

That means we should pay Welch through the 10th and Hays through the 11th which was the confirmation date. Is that your understanding also?

Janie

April 17, 2002

Ted Hosp, Esq.  
Governor's Legal Office  
600 Dexter Ave. Rm. NB-05  
Montgomery, AL 36130-3024

RE Thomas L. Hays

Dear Ted

I need your help with a most unusual problem. Gov. Siegelman recently appointed Mr. Hayes as the consumer member of the Commission pursuant to the provisions of §34-27-7(e) Code of Alabama 1975, as amended. This section provides that the consumer member shall not have been a licensed broker or salesperson for 10 years preceding the appointment. The Alabama Senate recently confirmed his appointment. The problem is a staff member of ours just discovered by that Mr. Hays indeed held a real estate license within the last 10 years.

My primary concern is that any commission actions in which he participates might be subject to legal challenge based on an allegation of improper composition of the commission. We are also aware that there is the potential for discomfort all around due to this, and would certainly like that to be avoided. Our next commission meeting is set for April 26 here in Montgomery at our office. We anticipate that Mr. Hays will attend. I do not presume to impose deadlines on the Governor, but want to stress the urgency of a decision being made before that meeting is held.

Let me close by stating emphatically that Commission appointments are entirely the business of the Governor and the Alabama Senate. Our staff has not and will not insert itself into that process. We stand ready to provide information as needed. Please let me hear from you as soon as possible.

Very truly yours,



Charles R. Sowell  
General Counsel

/crs

## **Charles Sowell**

---

**From:** Charles Sowell  
**Sent:** Thursday, April 18, 2002 7:32 AM  
**To:** 'THosp@governor.state.al.us'  
**Subject:** Thomas L. Hays, New Commissioner

Ted, I hand delivered this letter to Kathy yesterday. It contained a couple of errors that were noted, but I wanted you to have a clean copy. I believe this has the possibility of being not good for all involved. Let me know if you need anything from me.



LETTER3.DOC



OFFICE OF THE GOVERNOR

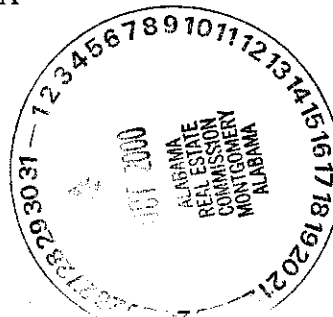
DON SIEGELMAN  
GOVERNOR

STATE OF ALABAMA

STATE CAPITOL  
600 DEXTER AVENUE, ROOM N-104  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-0937

To: Alabama Real Estate Commission  
From: Josh Hayes  
Appointments Secretary  
Date: October 26, 2000  
Re: Board Membership



In order for our office to update our records, I am requesting that you send to me an up-to-date listing of your board membership. Please include the following information on each member:

- Name
- Mailing Address
- Telephone Number
- Fax Number
- Gender
- Race
- Date of Appointment
- Expiration Date of Term
- Name of person making the appointment
- Qualifications (professional, Congressional District, etc.)
- Is Senate confirmation required?
- If so, date of Senate confirmation?
- Citation to law creating the board or if created by federal law, a copy of the statute creating the board.
- Name of Executive Director or Executive Secretary.

For your convenience in responding, I am enclosing a form that may be photocopied and completed for each member. This information is needed as soon as possible. Please mail it to me before **November 15, 2000**, or if you prefer, you may fax it to me at (334) 242-0936.

If you have any questions or if I may be of service to you in any way, please contact Ollie Ingram at (334) 242-2425.

Thank you for your assistance. Your prompt response to this request will be greatly appreciated.



PRINTED ON RECYCLED PAPER



**(PLEASE TYPE OR PRINT)**

**Board Name:** \_\_\_\_\_

**Member Name:** \_\_\_\_\_

**Member Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
**City**

\_\_\_\_\_  
**State**

\_\_\_\_\_  
**Zip Code**

**Telephone Number:** (home) \_\_\_\_\_ (work) \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Gender:** M F

**Race:** \_\_\_\_\_

**Date of Appointment:** \_\_\_\_\_

**Expiration Date of Term:** \_\_\_\_\_

**Name of person making the appointment:** \_\_\_\_\_

**Qualifications (Professional, Congressional District, etc.):** \_\_\_\_\_

\_\_\_\_\_  
**Is Senate confirmation required?** Y N

**If so, date of Senate confirmation:** \_\_\_\_\_

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

\_\_\_\_\_  
**Name of Executive Director or Executive Secretary:**

\_\_\_\_\_  
**Name of Chairperson or President:**

\_\_\_\_\_

(PLEASE TYPE OR PRINT)

Board Name: AREC

Member Name: \_\_\_\_\_

Member Mailing Address: \_\_\_\_\_

City

State

Zip Code

Telephone Number: (home) \_\_\_\_\_ (work) \_\_\_\_\_

Fax Number: \_\_\_\_\_

Gender: M F

Race: \_\_\_\_\_

Date of Appointment: \_\_\_\_\_

Expiration Date of Term: \_\_\_\_\_

Name of person making the appointment: Gov.

Qualifications (Professional, Congressional District, etc.): see attached  
copy of the Code.

Is Senate confirmation required? ☒ Y ☐ N

If so, date of Senate confirmation: \_\_\_\_\_

Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:

Code of Alabama 1975, § 34-27-7

Name of Executive Director or Executive Secretary:

D. Philip Lasater, Exec Dir

Name of Chairperson or President:

Bill E. Poole, Chairman



**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** George P. Hayes

**Member Mailing Address:** 120 Office Park Circle, Suite 10

Birmingham AL 35223  
**City State Zip Code**

**Telephone Number: (home)** 205/836-2356 **(work)** 205/877-0634

**Fax Number:** 205/877-0637

**Gender:** ☒ M ☐ F

**Race:** Caucasian

**Date of Appointment:** 02/11/1997

**Expiration Date of Term:** 09/30/2001

**Name of person making the appointment:** Gov. Fob James, Jr.

**Qualifications (Professional, Congressional District, etc.):** (Industry Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ Y ☐ N

**If so, date of Senate confirmation:** 03/11/1997

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman

(PLEASE TYPE OR PRINT)

Board Name: Alabama Real Estate Commission

Member Name: Gordon Henderson

Member Mailing Address: PO Box 268

<u>Albertville</u>	<u>AL</u>	<u>35950</u>
City	State	Zip Code

Telephone Number: (home) 256/505-0665 (work) 256/878-6161

Fax Number: 256/878-4542

Gender: ☒ M ☐ F

Race: Caucasian

Date of Appointment: 03/11/1998

Expiration Date of Term: 09/30/2003

Name of person making the appointment: Gov. Fob James, Jr.

Qualifications (Professional, Congressional District, etc.): (Industry Member)

see attached copy of the Code

Is Senate confirmation required? ☒ Y ☐ N

If so, date of Senate confirmation: 04/16/1998

Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:

Code of Alabama 1975, § 34-27-7

Name of Executive Director or Executive Secretary:

D. Philip Lasater, Executive Director

Name of Chairperson or President:

Bill E. Poole, Chairman

**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** Robert S. Hewes

**Member Mailing Address:** PO Drawer 6306

Dothan  
**City**

AL  
**State**

36302  
**Zip Code**

**Telephone Number: (home)** 334/792-0849 **(work)** 334/793-6600

**Fax Number:** 334/793-3250

**Gender:** ☒ **M** ☐ **F**

**Race:** Caucasian

**Date of Appointment:** 02/11/2000

**Expiration Date of Term:** 09/30/2005

**Name of person making the appointment:** Gov. Don Siegelman

**Qualifications (Professional, Congressional District, etc.):** (Industry Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ **Y** ☐ **N**

**If so, date of Senate confirmation:** 03/08/2000

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman

(PLEASE TYPE OR PRINT)

Board Name: Alabama Real Estate Commission

Member Name: S. Starke Irvine

Member Mailing Address: PO Box 2497

<u>Daphne</u>	<u>AL</u>	<u>36526-2497</u>
City	State	Zip Code

Telephone Number: (home) 334/626-0677 (work) 334/621-1337

Fax Number: 334/621-8555

Gender: ☒ M ☐ F

Race: Caucasian

Date of Appointment: 02/06/1997

Expiration Date of Term: 09/30/2001

Name of person making the appointment: Gov. Fob James, Jr.

Qualifications (Professional, Congressional District, etc.): (Industry Member)

see attached copy of the Code

Is Senate confirmation required? ☒ Y ☐ N

If so, date of Senate confirmation: 03/11/1997

Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:

Code of Alabama 1975, § 34-27-7

Name of Executive Director or Executive Secretary:

D. Philip Lasater, Executive Director

Name of Chairperson or President:

Bill E. Poole, Chairman

(PLEASE TYPE OR PRINT)

Board Name: Alabama Real Estate Commission

Member Name: Chester D. Mallory

Member Mailing Address: PO Box 6056

<u>Montgomery</u>	<u>AL</u>	<u>36106</u>
City	State	Zip Code

Telephone Number: (home) 334/284-1550 (work) 334/262-7773

Fax Number: 334/262-7789

Gender: ☒ M ☐ F

Race: Black

Date of Appointment: 03/11/1998

Expiration Date of Term: 09/30/2003

Name of person making the appointment: Gov. Fob James, Jr.

Qualifications (Professional, Congressional District, etc.): (Industry Member)

see attached copy of the Code

Is Senate confirmation required? ☒ Y ☐ N

If so, date of Senate confirmation: 04/16/1998

Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:

Code of Alabama 1975, § 34-27-7

Name of Executive Director or Executive Secretary:

D. Philip Lasater, Executive Director

Name of Chairperson or President:

Bill E. Poole, Chairman

**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** Gloria B. Nicholson

**Member Mailing Address:** 1725 E. University Drive

<u>Auburn</u>	<u>AL</u>	<u>36830</u>
<b>City</b>	<b>State</b>	<b>Zip Code</b>

**Telephone Number: (home)** 334/821-2786 **(work)** 334/826-0111

**Fax Number:** 334/826-0116

**Gender:** M ☐ F ☒

**Race:** Caucasian

**Date of Appointment:** 02/06/1997

**Expiration Date of Term:** 09/30/2001

**Name of person making the appointment:** Gov. Fob James, Jr.

**Qualifications (Professional, Congressional District, etc.):** (Industry Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ Y ☐ N

**If so, date of Senate confirmation:** 02/27/1997

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman

**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** Bill E. Poole

**Member Mailing Address:** 925A Franklin Street

<u>Huntsville</u>	<u>AL</u>	<u>35801</u>
<b>City</b>	<b>State</b>	<b>Zip Code</b>

**Telephone Number: (home)** 256/880-2000 **(work)** 256/533-0990

**Fax Number:** 256/534-1234

**Gender:** ☒ **M** ☐ **F**

**Race:** Caucasian

**Date of Appointment:** 02/25/1997

**Expiration Date of Term:** 09/30/2002

**Name of person making the appointment:** Gov. Fob James, Jr.

**Qualifications (Professional, Congressional District, etc.):** (Industry Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ **Y** ☐ **N**

**If so, date of Senate confirmation:** 03/25/1997

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman

**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** R. Crawford Welch, Jr.

**Member Mailing Address:** PO Box 230995

<u>Montgomery</u>	<u>AL</u>	<u>36123</u>
<b>City</b>	<b>State</b>	<b>Zip Code</b>

**Telephone Number: (home)** 334/213-3232 **(work)** 256/847-2128

**Fax Number:** 256/847-2121

**Gender:** ☒ **M** ☐ **F**

**Race:** Caucasian

**Date of Appointment:** 08/18/1997

**Expiration Date of Term:** 09/30/2001

**Name of person making the appointment:** Gov. Fob James, Jr.

**Qualifications (Professional, Congressional District, etc.):** (Public Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ **Y** ☐ **N**

**If so, date of Senate confirmation:** 08/27/1997

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman



**(PLEASE TYPE OR PRINT)**

**Board Name:** Alabama Real Estate Commission

**Member Name:** Ruth T. Whitley

**Member Mailing Address:** 1809 Skyland Boulevard, East

<u>Tuscaloosa</u>	<u>AL</u>	<u>35405</u>
<b>City</b>	<b>State</b>	<b>Zip Code</b>

**Telephone Number: (home)** 205/556-2039 **(work)** 205/556-2220

**Fax Number:** 205/556-2242

**Gender:** M ☒ F

**Race:** Caucasian

**Date of Appointment:** 05/11/1999

**Expiration Date of Term:** 09/30/2004

**Name of person making the appointment:** Gov. Don Siegelman

**Qualifications (Professional, Congressional District, etc.):** (Industry Member)

see attached copy of the Code

**Is Senate confirmation required?** ☒ Y ☐ N

**If so, date of Senate confirmation:** 05/20/1999

**Citation to law creating the board or if created by federal law, attach a copy of the statute creating the board:**

Code of Alabama 1975, § 34-27-7

**Name of Executive Director or Executive Secretary:**

D. Philip Lasater, Executive Director

**Name of Chairperson or President:**

Bill E. Poole, Chairman

**§ 34-27-6. Real estate courses.**

(a) The commission may approve and regulate schools that offer commission approved prelicense, postlicense, and continuing education courses.

(b) The commission may approve, sponsor, contract for or conduct, or assist in sponsoring or conducting real estate courses for licensees, may charge fees, and may incur and pay the necessary expenses in connection therewith.

(c) The commission may approve and regulate instructors who teach the commission approved prelicense, postlicense, and continuing education courses. The commission shall establish and collect fees as determined necessary, not to exceed fifty dollars (\$50) per instructor annually, to approved instructors who teach commission approved courses.

(d) The commission may approve courses and establish and collect fees as determined necessary, not to exceed one hundred dollars (\$100) per application, to review each course.

(e) The commission may establish one-year or multi-year approval periods for schools and instructors.

(f) The commission shall promulgate rules and regulations as necessary to accomplish the purpose of this section in accordance with the Administrative Procedure Act.

(Acts 1951, No. 422, p. 745, § 16; Acts 1971, No. 2485, p. 3966, § 16; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, § 1; Acts 1996, No. 96-791, p. 1471, § 1.)

**HISTORY****Amendment notes:**

The 1996 amendment, effective May 29, 1996, designated the existing text as subsection (b) and in such subsection, as so designated, inserted "may charge fees," and added subsections (a), (c), (d), (e), and (f).

**Cross references**

See RULE 790-X-1-.06 through RULE 790-X-1-.11; RULE 790-X-1-.14 through RULE 790-X-1-.19; RULE 790-X-1-.21; RULE 790-X-2-.03.

**§ 34-27-7. Real Estate Commission — Created; composition; qualifications of members; appointment; terms; compensation; organization; executive director and assistant executive director generally; seal; records; immunity from suit.**

(a) There is created the Alabama Real Estate Commission. The commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate as hereinafter provided. The Governor's appointments to the commission, except for the appointment of the consumer member made pursuant to subsection (e), shall be made from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership, as evidenced by the filing of a verified list of paid members with the Secretary of State within 10 days of April 6, and annually by December 31 of each year thereafter. At least one of the persons nominated for each commission seat shall not be a member of the Real Estate Society or trade association. The

Governor shall appoint one of the three nominated persons within 30 days following receipt of the list. If the Governor does not make an appointment within 30 days, the said Real Estate Society or trade association shall provide the Governor a list of three additional nominees. The Governor, upon receipt of the second list of nominees, shall appoint one of the six nominees within 30 days following receipt of the nominees. Appointments made at times when the Senate is not in session shall be effective ad interim. Any appointment made by the Governor while the Senate is in session shall be submitted not later than the third legislative day following the date of appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature.

(b) Ad interim appointments may be made by the Governor when the Legislature is not in session only for vacancies occurring by reason of death or resignation of a board member. Ad interim appointments shall be confirmed by the Senate at the next following regular or special session of the Legislature. Failure by the Senate to confirm shall result in a vacancy on the board that shall be filled by appointment by the Governor and confirmation by the Senate while the Legislature is in session. Any vacancy not acted upon shall remain a vacancy until it is filled at a subsequent session of the Legislature in the manner prescribed in this section.

(c) Each of the original seven appointees and their successors shall have been a resident and citizen of this state for at least 10 years prior to his or her appointment and whose vocation for at least 10 years shall have been that of a real estate broker or real estate salesperson. No person convicted of a violation of any federal or state real estate license law shall be eligible to serve. Not more than one member from any United States Congressional District shall be appointed to serve at the same time. The members of the commission shall serve five-year terms. On and after April 7, 1988, no member shall serve for more than two consecutive terms of office, except, however, each member shall hold office until his or her successor is appointed by the Governor and confirmed by the Senate. The period of time any member serves after the expiration of his or her term of office while awaiting the appointment and Senate confirmation of his or her successor shall not be considered as a consecutive term of office in determining the two consecutive terms of office limitation herein provided. All appointments shall expire on September 30 of the final year of a term, or on the date a successor to the member is appointed and confirmed. If a member does not serve his or her full term, the Governor shall appoint, in the same manner as original appointments are made, subject to confirmation by the Senate, a member to serve the unexpired portion of the term.

(d) On September 30, 1988, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a Black member who meets all of the other requirements of subsection (c), who shall serve no more than two consecutive terms of office, who shall be a full voting member, and who may be appointed from any congressional district in the state. Each successor Black member shall be appointed from a different

congressional district, to be rotated equally among the remaining congressional districts.

(e) On October 1, 1996, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a consumer member. The consumer member of the commission shall serve no more than two consecutive terms of office, shall be a full voting member, and shall be initially appointed from any congressional district in the state. Each successor consumer member shall be appointed from a different congressional district, on a rotating basis, among the remaining congressional districts. The consumer member shall meet all of the following requirements, that he or she:

- (1) Is 21 years of age or older.
- (2) Has been a resident and citizen of this state for at least 10 years prior to appointment.
- (3) Is a registered voter in this state.
- (4) Has no felony convictions.
- (5) Is the owner of real property.
- (6) Has not been a licensed real estate broker or salesperson for the 10 years preceding appointment.
- (7) Is not related to, by blood or marriage, or employed by, a real estate licensee.

(f) On the appointment of a new commissioner, the commission shall meet and select from its members a chair.

(g) Each member of the commission shall receive as full compensation three hundred dollars (\$300) per month. The members of the commission, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission.

(h) The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence. The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state.

(i) The commission shall adopt a seal by which it shall authenticate records and documents. Copies of all records and documents in the office of the commission duly certified and authenticated by the seal of the commission shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the commission shall be